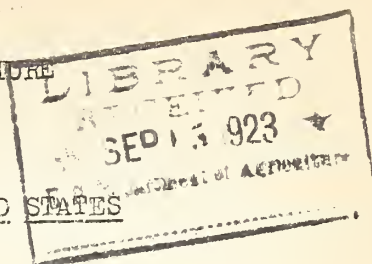


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UNITED STATES DEPARTMENT OF AGRICULTURE  
BUREAU OF BIOLOGICAL SURVEY



INSTRUCTIONS FOR THE GUIDANCE OF UNITED STATES  
GAME WARDENS AND DEPUTIES.

INTRODUCTION.

This manual is intended as a guide to those whose work is connected with the enforcement of the Migratory-Bird Treaty Act of July 3, 1918, and the provisions of the United States penal code commonly referred to as the Lacey Act, and is especially for the use of game wardens in the field. In part it is explanatory of, but in no way supersedes or modifies, the Administrative and Fiscal Regulations of the Department.

Wardens can not become proficient without being thoroughly familiar with the Administrative and Fiscal Regulations of the Department, the practice and procedure in handling violations, and the provisions of the Migratory Bird Treaty Act, and Regulations and the Lacey Act. In connection with illegal interstate shipments of birds and animals it also is important that wardens become familiar with the provisions of the laws governing the export of birds and animals in the States within their respective districts. It is obviously impracticable to include in a manual of this character all the laws relating to the practice and procedure of the courts in the exercise of their criminal jurisdiction, but it is thought that the instructions contained herein will be helpful to a warden in the discharge of his duties.

Whenever a warden is in doubt as to the law or methods of procedure he should write or wire at once to the Bureau for information, stating the case fully and plainly. Cooperation and advice may also be had from United States Attorneys. The United States customs officials also may often be able to render valuable aid in emergencies.

The efficiency of a warden and his usefulness to the Bureau will depend in a large measure upon his ability to command the respect and confidence of those with whom he comes in contact. He should be courteous and upright at all times in all his dealings. Discourtesy and inefficiency on the part of a warden will not be tolerated by the Bureau.

A warden to be a good officer must be courageous, as well as courteous, but any form of harshness or an overbearing attitude should be avoided. His methods should be direct, orderly, and firm, without provoking resistance. While a warden may exercise reasonable force, when necessary, in effecting an arrest, he should be courteous and considerate to the fullest possible extent. There may be times when a warden must act swiftly and forcibly, in which event a reputation for tact and courtesy will sustain him, if criticized.

Cooperation on the part of the public, and particularly on the part of State and municipal officials, is very necessary for the proper and effective enforcement of the Migratory Bird Treaty Act. These officials in the various branches of the State and municipal governments are all in a



position to render invaluable assistance. A warden should earn the confidence and respect of all such officers and of the public to the end that their cooperation may be ready and voluntary.

#### POWERS OF WARDENS.

The powers of wardens to enforce the provisions of the Migratory Bird Treaty Act are conferred by Section 5 of said Act.

Deputy wardens possess the same police powers as wardens, but they are not authorized to perform travel or incur expenses chargeable to the Bureau without first being specifically authorized by the Bureau; and when so authorized they will be paid a per diem for their services while actually employed and be reimbursed for travel expenses in accordance with the provisions of the Fiscal Regulations of the Department.

Wardens have no power to make arrests or seizures in cases involving violations of the Lacey Act, but in such cases wardens should secure copies of express records, affidavits of express agents as to shipments, affidavits of consignees showing receipt of shipments and other pertinent facts, and also secure from consignees cancelled checks made in payment of shipments, and original correspondence had with consignors. These papers, with the warden's report, should be transmitted to the Bureau for appropriate action.

All birds (migratory and nonmigratory), or parts thereof, nests, or eggs, including the plumage, taken, transported, or possessed contrary to the provisions of the Migratory Bird Treaty Act may be seized and held for use as evidence and for disposition by the court. Plumes of the birds of paradise, goura pigeons, foreign species of herons, and other birds that do not occur in this country are not protected by the Treaty Act, and wardens have no power to seize such plumage, unless transported interstate contrary to State laws, thus bringing it within the provisions of Section 4 of the Treaty Act.

Migratory birds or parts thereof, including the plumage, or their nests and eggs acquired by a person prior to July 3, 1918, the date when the Migratory Bird Treaty Act became effective, and held in possession without a permit by a person for his own use and not for sale should not be seized.

Birds and other articles seized should be suitably marked for identification and safely kept for future disposition.

Wardens are cautioned against making seizures unless the evidence at hand is sufficient to prove beyond a reasonable doubt that the accused is in unlawful possession of the things seized. Any illegal seizure will not only provoke serious criticism of the Bureau, but may lead to an action to recover damages against the warden making the seizure.

When a person commits a violation in view of a warden, or the warden has a warrant for the arrest of a person, the warden may, after the arrest





has been made, search his prisoner and take from his person, and hold for the disposition of the court, any property connected with the offense charged, or that may be used as evidence against him, or any weapon that might enable the prisoner to commit an act of violence or effect his escape.

Wardens have no right to search an accused not under arrest or to take from him any articles for use as evidence without his consent. In a proper case a warden may seize, in addition to contraband birds, the gun, ammunition, hunting license, or other articles found on the person of the accused that may tend to establish his identity or guilt. The fact that the accused intends to plead guilty should not determine the course of a warden in seizing for use as evidence game and implements used in its procurement found on the person of the accused. The principal thing that a warden must have in mind is the securing of sufficient substantial evidence to establish the identity and guilt of the accused in order that a conviction may be had. It must be borne in mind that an accused person intending to plead guilty may change his mind and plead not guilty at the trial.

#### COMPROMISE OF CASES.

Wardens must not settle or compromise any cases or offer immunity to any person accused of violating the law, and they must not accept any sum in payment of fines or other settlement of the case or fix or accept bail in any case. Bail can be fixed and accepted only by one of the officials named in Section 1014 of the Revised Statutes of the United States, and accused persons can be fined or imprisoned only by Federal court or Federal judge.

#### DUTIES.

Wardens are appointed for the specific purpose of enforcing the provisions of the Migratory Bird Treaty Act and the regulations thereunder and Sections 241-244 of the United States Penal Code, commonly referred to as the Lacey Act, and the authority so conferred may be exercised in any part of the United States, subject only to such limitations as may be prescribed by the Bureau.

Deputy wardens holding positions as State wardens may render incidental services in the enforcement of State game laws during the time they are rendering per diem service for the Bureau, but all cases of violations of the Federal laws that may come to their notice during the time they are rendering such per diem service must be reported to the Bureau for disposition.

All wardens, except those occupying cooperative positions, shall devote their entire time to the service and shall not be engaged in any other business, either public or private. (See Sec. 44, Administrative Regulations.)

No travel at government expense shall be performed by a warden, except under specific instructions from the Bureau.





A warden will be restricted in the discharge of his duties to the district covered in his letter of authorization, but he may travel in territory contiguous to his district when violations are being committed there within his view or hearing, or if the pursuit of a violator requires a warden to enter such contiguous territory.

It shall be the duty of a warden to familiarize himself with migratory bird conditions in his district and especially in those sections wherein the law is most frequently violated. The important hunting sections should be visited as frequently as the warden's allotment for travel expenses will permit and good reasons exist for believing that conditions require his presence.

He must not only do patrol duty in the ordinary sense of the word, but he must endeavor to anticipate the movements of those who would violate the law. He must be alert, study the methods of violators, cultivate the friendship of law-abiding people, and open channels for information concerning those things of which he ought to get early knowledge.

#### PROCEDURE.

Section 1014 of the Revised Statutes of the United States provides:

"For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizance of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

This section relates to natural persons and does not apply to corporations which will be proceeded against as hereinafter mentioned.

In cases involving firms, copartnerships, or corporations special care should be taken to ascertain the full names and addresses of all the partners of a firm or copartnership, the full, correct name of a corporation, the State under whose laws it is incorporated, date of incorporation, its principal place of business, and the full names and addresses of the principal officers.



While there are numerous officers given authority by Section 101<sup>4</sup> to hold preliminary hearings it is the proper practice to go before the nearest United States commissioner.

Officials named in said Section 101<sup>4</sup> customarily follow the practice in State courts. Wardens, therefore, must familiarize themselves with State laws on the subject of issuing and serving warrants, and in all cases where warrants are issued by State or municipal officials be guided by the provisions of State laws relating to the serving of such writs.

#### PROCEEDINGS AGAINST CORPORATIONS.

Corporations can not be prosecuted in the same manner as individuals. In a case against a corporation a warden will prepare separate affidavits for each witness, have them signed and executed before an officer authorized to administer oaths, and transmit the affidavits to the Bureau, with a report of the case.

#### CONFESSIONS.

A confession not made in open court can not be relied upon to secure a conviction unless it is supported by other evidence tending to show that the particular offense was committed. A confession is a voluntary declaration by a person who has committed an offense and, to be admissible as evidence against the accused, it must be clearly shown that it was free and voluntary. Defendants frequently deny their confessions when confronted by them in court and it is important, therefore, that wardens procure, in addition to the confession, affidavits from persons who have some personal knowledge of the commission of the offense. No difficulty arises if the party making the confession can be taken immediately before the court and pleads guilty. In such cases, the warden should consult with the U. S. Attorney who, no doubt, will be willing to expedite the prosecution. It is proper for a warden to interview or write to an alleged violator for the purpose of obtaining any statement he may care to make concerning the alleged violation. In writing to such person the warden should be careful not to use any sarcastic language or threats. The letter should be prepared in such manner as to be least calculated to give offense.

#### PROSECUTION IN FEDERAL COURT AFTER CONVICTION IN STATE COURT.

An act committed in violation of both Federal and State laws can be prosecuted in either Federal or State court, or in both, but the Federal courts are loathe to impose a second punishment where adequate punishment has already been meted out in State court. Only in exceptional cases, where the enormity of the offense justifies, will the Bureau recommend prosecution in Federal court if the case already has been handled in a State tribunal. In forwarding to the Bureau cases in which the accused has already been prosecuted in the State court, the warden should furnish good and sufficient reasons why Federal prosecution should be instituted.





## COOPERATION WITH STATE AUTHORITIES.

Evidence of violations committed contrary to both Federal and State laws should first be transmitted to the Bureau for disposition, but evidence of offenses committed in violation of State laws only should be forwarded promptly to the proper State authority for prosecution. Wardens should use every endeavor consistent with the discharge of their duties in the enforcement of the Federal law to secure evidence of State violations and, in addition to transmitting the evidence to the proper State authority, should report all such cases to the Bureau, including final disposition in State court.

## AFFIDAVITS.

Affidavits should be carefully prepared and should contain a clear and concise statement of the facts within the personal knowledge of the affiant. They must show that a violation of the law has occurred, the place where, and the date on which it occurred. Hearsay evidence, irrelevant matter, and facts which may be used by way of defense should be omitted from the affidavit but, for the information of the Bureau, should be stated in a report or letter accompanying the affidavit.

When practicable, affidavits should be sworn to before a clerk or deputy clerk of a U. S. court, or a U. S. commissioner. No fee should be paid to such an officer for administering the oath, as these officers are paid their fees on rendering their accounts to the Treasury Department. If such an officer is not available, an affidavit may be sworn to before a notary public or a justice of the peace having a seal, and care should be exercised to see that the seal of such attesting officer is properly affixed to the affidavit; if such officer has no seal, it will be necessary to have affixed to the affidavit the county clerk's certificate of authentication. A warden may claim reimbursement in his account for fees thus paid to a notary, justice of the peace, or county clerk.

## ARREST IN GENERAL.

A warden should sufficiently familiarize himself with the practice and procedure in criminal cases to avoid exceeding his authority. If a warden who acts within the scope of his employment and within his authority is sued on that account the Department of Justice will be requested to assist in his defense; but, if a warden knowingly exceeds his authority and gets into difficulties, he must personally defend himself.

No hard and fast rule as to when an arrest should be made can be stated; an employee must exercise his judgment. Usually no arrest should be made in trifling or technical cases; but in dealing with such cases great care must be exercised to avoid the appearance of partiality, and reports thereof should be forwarded promptly to the Bureau. No consideration of prominence or influence, when the offending party is of the age of mature judgment, should cause a warden to deviate from his duty of insisting that the law be observed.

A warden may make an arrest when armed with a warrant issued by a





court having competent jurisdiction, or without a warrant when the offense is committed in the warden's presence or view, in which event the arrest must be made immediately. An arrest without a warrant must not be made unless the violation is committed in the presence or view of the warden. The procedure in making arrests with and without warrants is hereinafter stated separately.

An arrest on a warrant must be made for the purpose stated therein and, if the accused so demands, the warrant must be read to him as soon as the warden can do so without danger to himself or of the escape of the accused. When the arrest is made for an offense committed within the view of a warden he should inform the accused of the reason for making it.

It may be unnecessary, at the time the offense is committed, to make an arrest when the warden knows the accused, or has at the time established the latter's identity, so that he can be located thereafter and arrested on a warrant. The main thing is to take proper steps to prevent the escape of the accused.

When an immediate arrest is not made no warrant of arrest should be secured, in usual cases, but the warden should promptly furnish the Bureau with his report of the violation, his affidavit of facts, and the affidavits of other material witnesses.

In case the accused is known to, or his identity has been fully established by, the warden, it would be good practice, as a rule, to make no arrest if the accused will voluntarily appear before a commissioner at a time to be agreed upon and will permit the warden to take and hold for use as evidence any articles the warden may desire for that purpose. Even the appearance of an accused before a commissioner should be required only if circumstances justify, as the accused can be proceeded against by information. In such cases the warden should secure, if possible, a written confession of the accused, if he is willing voluntarily to make a confession, and, in any event, should secure a written statement in which the accused agrees to appear before a commissioner, if such appearance is deemed necessary, and consents to the warden holding any articles for use as evidence. If the accused refuses to give such consent and there is danger that he may escape, unless the articles mentioned are held for use as evidence against him, the warden should make an immediate arrest and take him before a commissioner, in which event the warden, of course, would seize any of the articles enumerated above found on the accused that may be needed as evidence and hold them for use at the trial.

It is not proper to release a person under arrest after making a seizure, and it is always best when an arrest is made to take the accused immediately before the commissioner for proper action. If an arrest has been made and good reasons develop for releasing the prisoner, the warden should ask him if he cares to make a statement, oral or in writing, and whether he will leave his gun, etc., with the warden. The warden must caution the prisoner that his statement may be used against him in any trial that may result.

When no arrest is made or it is impracticable or unnecessary to take



an accused before the commissioner, the accused will be proceeded against by information prepared by the Solicitor of the Department upon receipt of the warden's report and affidavit of the facts.

#### ARREST WITHOUT WARRANT.

The usual mode of procedure is here given. The practice may vary somewhat in different States, making it necessary for a warden to familiarize himself with the State laws governing court procedure in his district.

When a violation is committed in the view of a warden he should immediately arrest the offender and take him before the nearest United States commissioner, or other magistrate or official, mentioned in Section 1014 of the United States Revised Statutes, unless the violator is well known to the employee and satisfactory arrangements can be made for the accused to appear before a commissioner or magistrate, if such appearance is deemed necessary by the warden, at a more convenient time in the near future; such an arrangement should be made only when the warden is satisfied that the accused will so appear, or, in case of his failure, that he can be easily located and arrested thereafter on a warrant.

In case the accused is not arrested, a report of the case together with affidavits of the witnesses should be forwarded promptly to the Bureau in order that the case may be transmitted to the Department of Justice for prosecution.

When the offender under arrest without warrant is brought before the magistrate a complaint should be prepared, sworn to before, and filed with, the magistrate, who will immediately inform the accused of the charge against him and of his right to the aid of counsel at every stage of the proceeding, and before any proceedings are had. If he does not desire counsel the accused must plead to the charge -- either "guilty" or "not guilty." The accused may waive or demand an examination. Each step in the proceeding will be recorded by the magistrate in his docket.

In case of a plea of "guilty" or if examination is waived the magistrate will commit the defendant, fix bail immediately, and require the accused to give bond for his appearance at the next term of the United States court in the district in which the crime was committed. If an examination is demanded, the hearing may be had at once, or an adjournment had to a convenient date. In case of an adjournment the accused should be committed, bail fixed by the magistrate, and the accused required to give a bond for his appearance at the examination. If the bond be not given, the warden should take the accused to the county jail designated in warrant of commitment there to be confined until the hearing is held, or to await the action of the next term of the United States court having jurisdiction of the case.

In all cases a certified copy of the warrant of commitment must be delivered to the sheriff or jailor as his authority to hold the prisoner, and the original warrant shall be returned to the proper court or officer, with the warden's return thereon.





The warden and the witnesses must be present at the hearing to testify to the facts tending to show that the accused is guilty of the charge made against him.

To authorize the commissioner or magistrate in an examination of an offender to commit he need not be convinced beyond a reasonable doubt of the guilt of the accused, but the proof should be such as to afford probable cause to believe that the offense was committed, and by the accused.

If the evidence shows the existence of probable cause for believing the accused to be guilty of the offense, the magistrate should commit him for the action of the United States court in the district where the crime was committed, fix bail, and require the accused to give bond for his appearance. In default of bail being given the accused should be confined in the jail designated in the warrant of commitment.

In all cases of arrest without warrant the warden should promptly report the facts to the Bureau.

#### ARREST WITH WARRANT.

Where an offense is not committed within view of the warden he should ascertain the material facts and report the case promptly to the Bureau with affidavits of the witnesses. If the papers tend to establish that a crime has been committed they will be transmitted to the Department of Justice for appropriate action.

An emergency may arise requiring the prompt issuance of a warrant in order to prevent the escape of an accused person and in such cases a warden should apply to one of the officials named in Section 1014 of the United States Revised Statutes, preferably the nearest United States commissioner, for a warrant commanding the arrest of the accused.

To obtain a warrant it is necessary to comply with certain conditions in order to give the magistrate jurisdiction. A complaint must be prepared showing the fact that a crime has been committed, and that the accused committed it; the complaint must be made by a person cognizant of the facts, sworn to before, and filed with, the magistrate.

The complaint should be carefully drawn, showing in the most direct language who is alleged to have committed the violation, the time and place where the alleged violation was committed, and what acts the accused committed which constitute the violation; and should allege that the acts stated were contrary to the Migratory Bird Treaty Act approved July 3, 1918.

If these papers are in proper form and the charges contained in the complaint tend to establish that a crime has been committed, and that the person named is guilty of a crime, the commissioner or other magistrate will issue a warrant for the arrest of the accused person.

The warrant for the arrest of the accused may be executed by any warden to whom it may be directed. The execution of the warrant consists





of taking into custody the person named therein. The warden should make his return, which consists of the production of the accused before the commissioner or magistrate, together with the warrant endorsed on the back thereof to show execution.

Before a warden serves any warrant or other court process he should carefully scrutinize the document for any defects or omissions; if he executes a defective process he may become personally liable.

#### EXPENSES EXECUTING PROCESS.

When a warrant of arrest or a search warrant, issued by a court or officer of competent jurisdiction, in connection with violations of the Migratory Bird Treaty Act, is executed by a United States game warden or one of his deputies, the expenses of the warden and any prisoner prior to his commitment are a charge against the appropriation "General Expenses Bureau of Biological Survey - Protection of Migratory Birds."

When such a warrant is executed by a marshal of the United States or one of his deputies, and the marshal is accompanied by a game warden, the expenses of the marshal and any prisoner are a charge against the appropriation to the Department of Justice, and the expenses of the warden are a charge against the appropriation for the protection of migratory birds.

The expenses incurred in executing a warrant of commitment, whether by a marshal or a game warden, are chargeable against the appropriation to the Department of Justice. In case a warrant of commitment is executed by a game warden his expense account should be rendered to the marshal for approval and put in the way of payment.

When a warrant is executed by a marshal the game warden must not pay any part of the expense of the marshal and prisoner and claim reimbursement therefor.

#### MEMORANDA OF OBSERVATIONS.

All wardens, except those occupying cooperative positions, must keep diaries containing detailed records of their itineraries and of their activities. Immediately after making an arrest, while the circumstances are fresh in his mind, a warden must make full and complete notes in his diary of his observations of the actions of the accused, and mark for identification any contraband birds seized. The notes must contain the following data: (1) Full name and address of the accused; (2) time when, and place where, the violation was committed; (3) particular acts, which can be proved, constituting the violation; (4) number and kinds of birds seized; (5) statements made by accused when arrested; (6) names and addresses of persons present at time the violation was committed or when any statement was made by accused; (7) any other facts observed in connection with the case.

In cases of illegal killing of birds reference should be made to the distance between the warden and the accused at the time of the commission of the violation; and, if it occurred between sunset and half an hour before



sunrise, the exact time of its commission should be given as shown by the warden's watch, the correctness of which should be verified, if possible. In brief, all facts and circumstances having a direct bearing on the case should be recorded to be later used in refreshing the warden's memory when in court to give his testimony. Such memoranda may be used to refresh the memory of a witness only when it was made at the time when the event occurred or immediately thereafter.

It should never be assumed that an accused person will plead guilty and that it is unnecessary to take proper precautions to preserve the evidence of guilt. Proceed in each case as though it is to be hotly contested and leave nothing undone that should be attended to in order to establish the guilt of the accused.

#### PRESERVATION OF EXHIBITS.

Migratory birds possessed contrary to law must be seized immediately by a warden, properly marked, and preserved, if possible, in their original condition for future use as evidence. Birds so seized must be marked or tagged forthwith for identification by the warden making the seizure with the following information: (1) Date of seizure; (2) place of seizure; (3) name and address of person from whom seized; (4) species seized; (5) quantity seized; (6) witnesses present when seizure was made.

When dead birds seized are to be preserved for future use as evidence they should be placed promptly either in a convenient cold storage in the name of the United States Department of Agriculture, Bureau of Biological Survey, or in a package and sealed in such manner that at any time a warden can swear that the contents of such package are the identical contents that he placed therein. Whenever possible a warden should obtain a written agreement from the person from whom the specimens were seized authorizing them to be turned over to the Bureau for scientific, educational, or food purposes. A duplicate receipt embodying the agreement and specifying the number and species of birds should be executed by the warden and the violator, each of whom should retain a copy. If such a release is given game birds should be given to a hospital, asylum, charitable institution, or institution maintained for the care of the poor, for use as food by the inmates thereof; migratory insectivorous or nongame birds should be given to educational or scientific institutions. The warden should take a receipt from the superintendent, or person in charge of the institution, to whom birds or plumage may be given, showing the number and species of birds or plumage thus donated. In no case should birds be given to individuals or public officials for personal use.

In case a violator refuses to enter into an agreement authorizing birds to be disposed of for food purposes, and it is impossible to preserve them for use as evidence, the warden should retain the heads, wings, and feet of the birds for use as evidence and dispose of the carcasses by gift as stated in the preceding paragraph.

In cases involving seizure of a small number of birds, especially the smaller species, when no agreement to dispose of the birds is obtained from the violator, the birds may be preserved by cutting open the abdomen





and placing them in an ordinary fruit jar filled with a 10 per cent solution of formalin. After remaining in the jar about a week, the birds can be taken out and the carcasses dried after which they will practically mummify and keep indefinitely. Birds thus preserved should be properly tagged for identification before being placed in the preservative. Eternal or waterproof ink should be used in marking tags.

When live birds are seized they must be retained alive in a suitable place for disposition by the court, unless other instructions are received from the Bureau. In the case of live birds wardens should also obtain, whenever possible, a release of the birds to the Bureau.

In cases involving the killing of migratory game birds in excess of the daily bag limit, or shipment in excess of the number authorized by the Federal regulations, all the birds killed or shipped should be seized and handled in accordance with these instructions.

Unless seized migratory birds or plumage are disposed of pursuant to the foregoing instructions they should be held for use as evidence by the warden seizing them, and for disposition by the court, and should not be forwarded to the Bureau, except in doubtful cases, for the purpose of having the specimens or plumes identified. Guns, ammunition, and other paraphernalia used in the illegal procurement of migratory birds and seized for use as evidence should be forwarded to the headquarters of the warden in the district where the seizure is made, to be held there pending disposition of the case. Such articles should be properly marked and tagged for identification. Special care should be exercised to keep the articles in a safe place where they will not be lost or stolen, so that they will be available at the trial and, in proper cases, can be returned to the accused when the case has been terminated.

If, for any reason, an exhibit is to be placed outside of the warden's control or possession he must attach an indestructible marker thereon, so that when it is returned to him he can identify it as the one he had previously in his possession.

#### PURCHASE OF BIRDS OR PLUMAGE FOR USE AS EVIDENCE.

It is unnecessary, except possibly in rare cases, to purchase birds, plumage, or other specimens for use as evidence, as the law makes it unlawful to offer for sale as well as to sell migratory birds or parts thereof and authorizes the immediate seizure of birds or parts thereof that have been exposed or offered for sale. Wardens, therefore, must not, except in rare cases, purchase birds or parts thereof for use as evidence but should immediately seize and hold for use as evidence all such birds or plumage they find offered or exposed for sale.

In some districts Federal judges and United States attorneys hold it to be improper for a Federal officer to purchase, or cause to be purchased, birds from a person in order to get evidence against him, even though such evidence can be secured in no other way. In other jurisdictions the judges and United States attorneys hold a contrary opinion.





You should, therefore, become familiar with the attitude of the Federal judge and United States attorney in your district on this question.

#### PURCHASE OF SUPPLIES.

Wardens must not purchase any equipment or supplies other than subsistence supplies or supplies in connection with minor repairs of boats without being first authorized by the Bureau. Authorization may be obtained by telegraph in emergencies.

#### REPORTS.

Wardens must furnish the Bureau, at the end of each month, with tentative itinerary reports of travel planned by them for the succeeding month, showing places to be visited, with probable dates of arrival and departure, and the places where telegrams can be despatched or mail forwarded to them. In case a tentative itinerary is changed the warden should inform the Bureau by wire, if necessary.

Wardens must also furnish the Bureau, at the end of each week, on blanks furnished by the Bureau for that purpose, with a summary report containing detailed statements of their activities during each week and results accomplished. These reports must be in such detail as to inform the Bureau of the actual work performed and results accomplished each day by wardens, together with the time of arrival at and departure from points between which travel is performed.

Deputy game wardens must render such weekly reports during the time they are employed on per diem service, and a brief summary report of their activities at the end of each fiscal year (June 30).

#### HIRING OF ASSISTANTS.

Wardens must not hire assistants, except boatmen, guides, etc., temporarily, not to exceed 4 or 5 days, without first receiving permission from the Bureau, in which case the name, address, and occupation of such person, together with a statement of the work he is to perform and the reasons therefor must be furnished the Bureau. Temporary assistants should be hired only in exceptional and urgent cases in which the work to be done can not be performed effectively by the warden without an assistant.

A temporary employee does not possess the powers conferred by Section 5 of the Migratory Bird Treaty Act unless he has been regularly appointed by the Secretary of Agriculture to enforce the law, but he may assist a regular employee in making an arrest.

#### FEES.

Wardens and deputy wardens who produce department records or testify in any judicial proceeding in Federal or State courts in any case involving violations of the Migratory Bird Treaty Act or the Lacey Act or in cases originating in the Department shall accept no fees, but their expenses for travel and subsistence will be paid in accordance with the fiscal regulations. (See Paragraph 59, Administrative Regulations.)



U. S. game wardens must not accept any fees, rewards, or remuneration of any kind from State or municipal authorities, sportsmen's organizations, or other sources as payment or reward for securing or assisting in securing cases involving violations of State or Federal game laws or fish laws.

#### TRANSPORTATION REQUESTS.

Transportation requests should be used in paying for railroad transportation except when it may be necessary to pay cash fare in order to conceal the identity of the warden.

#### USE OF PERSONALLY OWNED AUTOMOBILES.

Wardens must not use automobiles, personally owned or hired, in official travel if public means of transportation are available, unless it can be clearly shown that the use of such automobile was to the advantage of the government, resulting in the saving of time, or money, or in the performance of an official duty which could not have been performed as efficiently otherwise. Each account covering actual operating charges or mileage rates for automobiles must be supported by a certificate setting forth, among other things, "that no public or regular means of transportation could be used as advantageously in the interest of the Government."

#### CONCEALED WEAPONS.

A commission as U. S. deputy game warden does not, in itself, give the person appointed to such position the authority to carry a concealed weapon at all times, but he may carry such concealed weapon only when employed on per diem duty by the Bureau.

#### EXAMINATION OF EXPRESS RECORDS.

The general rules of the American Railway Express Company authorize its agents to furnish any officer or agent of the Federal government, in the exercise of his duty, information concerning property in possession of the company for interstate transportation. If an agent of the Express Company unreasonably refuses to give a warden an opportunity to examine express records or to give him assistance to determine whether property in possession of the company is being illegally shipped in interstate commerce, the warden should promptly report the facts to the Bureau.

#### INDIAN RESERVATIONS.

Hunting and fishing rights have generally been reserved for the Indians by treaty, and offenses against either Federal or State game and fish laws committed by Indians on their reservations are left to the action of the tribal authorities. Should offenses against the Migratory Bird Treaty Act become serious, it is very possible that appropriate action may be taken through the Department of the Interior for the enactment of tribal laws conforming to the Federal regulations. U. S. game wardens have no authority to arrest Indians for committing violations on their reservations even though the permission of the superintendents in





charge of the reservations is first obtained. Persons other than Indians, however, may be arrested for violating the Federal laws on Indian reservations and the permission or sanction of the superintendents is not necessary to authorize the arrest. The Department of the Interior having jurisdiction over Indian reservations is, however, in hearty sympathy with efforts to conserve wild life, and wardens, upon visiting reservations, should call upon the superintendents in charge and acquaint themselves with regulations governing Indian country.

#### CORRESPONDENCE AND TELEGRAMS.

All letters to the Bureau should be directed to the "Chief, Biological Survey, Washington, D.C." Communications should be sent to no other Department or Bureau of the Government.

All telegrams to the Bureau should be directed to "Biological Survey, Agriculture, Washington." Telegrams should be used sparingly, but wardens should not hesitate to use them in proper cases, eliminating all unnecessary words. They should not be used in ordering supplies, asking for increased expense allotment, except in emergencies, or, at government expense, in respect to annual or sick leave, or leave without pay.

When writing to the Bureau letters containing information which must be submitted to another warden for further investigation, you should furnish an original and two carbon copies of the letter. The original letter will be retained in the Bureau, one of the copies, with appropriate instructions, will be forwarded to the warden who is to make the further investigation, and the other copy with information as to the disposition of the matter will be returned to you.

No letter should embrace matter concerning more than one subject or case. Write a separate letter on each topic, making each communication full and complete in itself, or if the subject matter is so general in its nature that the letter must necessarily cover more than one case, a sufficient number of carbon copies of the letter should be furnished for filing with each case involved.

Attention is called to the following section of the Administrative Regulations of the U. S. Department of Agriculture:

"147.-Names on Letterheads. No individual's name shall appear on the letterheads of any bureau."

The official title and office address may be printed on stationery, provided permission so to do is first obtained from the Bureau.

#### ATTENDANCE AT MEETINGS - Delivery of Lectures.

A warden may attend meetings occurring in the course of his official travel, when such attendance will be in the direct interest of his work, and he may deliver at such meetings lectures of instruction and disseminate information in regard to the work and the Federal game laws.





Travel must not be performed, however, for the sole purpose of attending meetings without first obtaining from the Bureau permission so to do.

A warden must not attend a session of a State legislature or appear before a legislative committee in the interest of legislation unless permission has been first obtained from the Bureau. Such authorization will be granted only when a member of a committee on game of a legislature (preferably the chairman) requests the Bureau to grant such permission.

#### LEAVE OF ABSENCE.

Sections 92 to 138 inclusive, of the Administrative Regulations, as amended, must be strictly followed.

It must be borne in mind that leave of absence is a privilege and not a legal right, and can be granted to a warden only when such leave can be taken without detriment to the service. A warden must anticipate taking annual leave at a time when his services will be least required in his district. This will often obviate the necessity of revoking leave of absence and ordering the warden to return to duty before its expiration.

A warden will not be permitted to take annual leave while in travel status, unless before the commencement of the trip on which he desires to take such leave, he shall have first requested such leave of the Bureau and received permission to take it. Application for such permission shall state the extent of the travel to be performed, the reasons therefor, the time when and place where the warden desires to take leave of absence, and the time when and place where he intends to return to duty.

Deputy wardens and temporary employees are not entitled to leave of absence.

#### EFFICIENCY RATING.

A warden will be rated upon efficiency and in fixing his rating the following matters will be considered:

- (1) General activity:
  - (a) Number of violations reported and the sufficiency of the evidence gathered upon which to base a prosecution.
  - (b) Expenses incurred.
  - (c) Completeness of reports.
  - (d) Knowledge of the law and of conditions.
  - (e) Cooperation with State officials.
- (2) Compliance with fiscal and administrative regulations and the rules of the Bureau.
- (3) Willingness to work.
- (4) Initiative.
- (5) Dispatch.



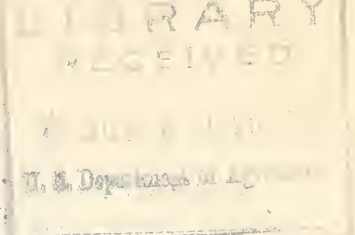
- (6) Accuracy.
- (7) Neatness.
- (8) Cheerfulness with which duties are performed.
- (9) Personal conduct.
- (10) The general observance of the law by the people in a warden's district, provided it is apparent that the warden was instrumental in bringing about a clean and healthful condition.

No attempt has been made to list these subjects in the order of their importance; suffice it to say that a warden's entire course of conduct and activity will be scrutinized and considered in determining his standard of efficiency.

A warden's efficiency rating will be considered not only in cases of promotion but should a warden's rating warrant so doing he may be demoted, reduced in pay, or dismissed when such action will promote the efficiency of the service. (Section 35, Administrative Regulations, and Rule XII of United States Civil Service Rules.)



UNITED STATES DEPARTMENT OF AGRICULTURE  
BUREAU OF BIOLOGICAL SURVEY



INSTRUCTIONS FOR THE GUIDANCE OF UNITED STATES  
GAME WARDENS AND DEPUTIES.

INTRODUCTION.

This manual is intended as a guide to those whose work is connected with the enforcement of the Migratory-Bird Treaty Act of July 3, 1918, and the provisions of the United States penal code commonly referred to as the Lacey Act, and is especially for the use of game wardens in the field. In part it is explanatory of, but in no way supersedes or modifies, the Administrative and Fiscal Regulations of the Department.

Wardens can not become proficient without being thoroughly familiar with the Administrative and Fiscal Regulations of the Department, the practice and procedure in handling violations, and the provisions of the Migratory Bird Treaty Act, and Regulations and the Lacey Act. In connection with illegal interstate shipments of birds and animals it also is important that wardens become familiar with the provisions of the laws governing the export of birds and animals in the States within their respective districts. It is obviously impracticable to include in a manual of this character all the laws relating to the practice and procedure of the courts in the exercise of their criminal jurisdiction, but it is thought that the instructions contained herein will be helpful to a warden in the discharge of his duties.

Whenever a warden is in doubt as to the law or methods of procedure he should write or wire at once to the Bureau for information, stating the case fully and plainly. Cooperation and advice may also be had from United States Attorneys. The United States customs officials also may often be able to render valuable aid in emergencies.

The efficiency of a warden and his usefulness to the Bureau will depend in a large measure upon his ability to command the respect and confidence of those with whom he comes in contact. He should be courteous and upright at all times in all his dealings. Discourtesy and inefficiency on the part of a warden will not be tolerated by the Bureau.

A warden to be a good officer must be courageous, as well as courteous, but any form of harshness or an overbearing attitude should be avoided. His methods should be direct, orderly, and firm, without provoking resistance. While a warden may exercise reasonable force, when necessary, in effecting an arrest, he should be courteous and considerate to the fullest possible extent. There may be times when a warden must act swiftly and forcibly, in which event a reputation for tact and courtesy will sustain him, if criticized.

Cooperation on the part of the public, and particularly on the part of State and municipal officials, is very necessary for the proper and effective enforcement of the Migratory Bird Treaty Act. These officials in the various branches of the State and municipal governments are all in a



position to render invaluable assistance. A warden should earn the confidence and respect of all such officers and of the public to the end that their cooperation may be ready and voluntary.

#### POWERS OF WARDENS.

The powers of wardens to enforce the provisions of the Migratory Bird Treaty Act are conferred by Section 5 of said Act.

Deputy wardens possess the same police powers as wardens, but they are not authorized to perform travel or incur expenses chargeable to the Bureau without first being specifically authorized by the Bureau; and when so authorized they will be paid a per diem for their services while actually employed and be reimbursed for travel expenses in accordance with the provisions of the Fiscal Regulations of the Department.

Wardens have no power to make arrests or seizures in cases involving violations of the Lacey Act, but in such cases wardens should secure copies of express records, affidavits of express agents as to shipments, affidavits of consignees showing receipt of shipments and other pertinent facts, and also secure from consignees cancelled checks made in payment of shipments, and original correspondence had with consignors. These papers, with the warden's report, should be transmitted to the Bureau for appropriate action.

All birds (migratory and nonmigratory), or parts thereof, nests, or eggs, including the plumage, taken, transported, or possessed contrary to the provisions of the Migratory Bird Treaty Act may be seized and held for use as evidence and for disposition by the court. Plumes of the birds of paradise, goura pigeons, foreign species of herons, and other birds that do not occur in this country are not protected by the Treaty Act, and wardens have no power to seize such plumage, unless transported interstate contrary to State laws, thus bringing it within the provisions of Section 4 of the Treaty Act.

Migratory birds or parts thereof, including the plumage, or their nests and eggs acquired by a person prior to July 3, 1918, the date when the Migratory Bird Treaty Act became effective, and held in possession without a permit by a person for his own use and not for sale should not be seized.

Birds and other articles seized should be suitably marked for identification and safely kept for future disposition.

Wardens are cautioned against making seizures unless the evidence at hand is sufficient to prove beyond a reasonable doubt that the accused is in unlawful possession of the things seized. Any illegal seizure will not only provoke serious criticism of the Bureau, but may lead to an action to recover damages against the warden making the seizure.

When a person commits a violation in view of a warden, or the warden has a warrant for the arrest of a person, the warden may, after the arrest

has been made, search his prisoner and take from his person, and hold for the disposition of the court, any property connected with the offense charged, or that may be used as evidence against him, or any weapon that might enable the prisoner to commit an act of violence or effect his escape.

Wardens have no right to search an accused not under arrest or to take from him any articles for use as evidence without his consent. In a proper case a warden may seize, in addition to contraband birds, the gun, ammunition, hunting license, or other articles found on the person of the accused that may tend to establish his identity or guilt. The fact that the accused intends to plead guilty should not determine the course of a warden in seizing for use as evidence game and implements used in its procurement found on the person of the accused. The principal thing that a warden must have in mind is the securing of sufficient substantial evidence to establish the identity and guilt of the accused in order that a conviction may be had. It must be borne in mind that an accused person intending to plead guilty may change his mind and plead not guilty at the trial.

#### COMPROMISE OF CASES.

Wardens must not settle or compromise any cases or offer immunity to any person accused of violating the law, and they must not accept any sum in payment of fines or other settlement of the case or fix or accept bail in any case. Bail can be fixed and accepted only by one of the officials named in Section 1014 of the Revised Statutes of the United States, and accused persons can be fined or imprisoned only by Federal court or Federal judge.

#### DUTIES.

Wardens are appointed for the specific purpose of enforcing the provisions of the Migratory Bird Treaty Act and the regulations thereunder and Sections 241-244 of the United States Penal Code, commonly referred to as the Lacey Act, and the authority so conferred may be exercised in any part of the United States, subject only to such limitations as may be prescribed by the Bureau.

Deputy wardens holding positions as State wardens may render incidental services in the enforcement of State game laws during the time they are rendering per diem service for the Bureau, but all cases of violations of the Federal laws that may come to their notice during the time they are rendering such per diem service must be reported to the Bureau for disposition.

All wardens, except those occupying cooperative positions, shall devote their entire time to the service and shall not be engaged in any other business, either public or private. (See Sec. 44, Administrative Regulations.)

No travel at government expense shall be performed by a warden, except under specific instructions from the Bureau.



A warden will be restricted in the discharge of his duties to the district covered in his letter of authorization, but he may travel in territory contiguous to his district when violations are being committed there within his view or hearing, or if the pursuit of a violator requires a warden to enter such contiguous territory.

It shall be the duty of a warden to familiarize himself with migratory bird conditions in his district and especially in those sections wherein the law is most frequently violated. The important hunting sections should be visited as frequently as the warden's allotment for travel expenses will permit and good reasons exist for believing that conditions require his presence.

He must not only do patrol duty in the ordinary sense of the word, but he must endeavor to anticipate the movements of those who would violate the law. He must be alert, study the methods of violators, cultivate the friendship of law-abiding people, and open channels for information concerning those things of which he ought to get early knowledge.

#### PROCEDURE.

Section 1014 of the Revised Statutes of the United States provides:

"For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizance of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

This section relates to natural persons and does not apply to corporations which will be proceeded against as hereinafter mentioned.

In cases involving firms, copartnerships, or corporations special care should be taken to ascertain the full names and addresses of all the partners of a firm or copartnership, the full, correct name of a corporation, the State under whose laws it is incorporated, date of incorporation, its principal place of business, and the full names and addresses of the principal officers.

While there are numerous officers given authority by Section 1014 to hold preliminary hearings it is the proper practice to go before the nearest United States commissioner.

Officials named in said Section 1014 customarily follow the practice in State courts. Wardens, therefore, must familiarize themselves with State laws on the subject of issuing and serving warrants, and in all cases where warrants are issued by State or municipal officials be guided by the provisions of State laws relating to the serving of such writs.

#### PROCEEDINGS AGAINST CORPORATIONS.

Corporations can not be prosecuted in the same manner as individuals. In a case against a corporation a warden will prepare separate affidavits for each witness, have them signed and executed before an officer authorized to administer oaths, and transmit the affidavits to the Bureau, with a report of the case.

#### CONFESSIONS.

A confession not made in open court can not be relied upon to secure a conviction unless it is supported by other evidence tending to show that the particular offense was committed. A confession is a voluntary declaration by a person who has committed an offense and, to be admissible as evidence against the accused, it must be clearly shown that it was free and voluntary. Defendants frequently deny their confessions when confronted by them in court and it is important, therefore, that wardens procure, in addition to the confession, affidavits from persons who have some personal knowledge of the commission of the offense. No difficulty arises if the party making the confession can be taken immediately before the court and pleads guilty. In such cases, the warden should consult with the U. S. Attorney who, no doubt, will be willing to expedite the prosecution. It is proper for a warden to interview or write to an alleged violator for the purpose of obtaining any statement he may care to make concerning the alleged violation. In writing to such person the warden should be careful not to use any sarcastic language or threats. The letter should be prepared in such manner as to be least calculated to give offense.

#### PROSECUTION IN FEDERAL COURT AFTER CONVICTION IN STATE COURT.

An act committed in violation of both Federal and State laws can be prosecuted in either Federal or State court, or in both, but the Federal courts are loathe to impose a second punishment where adequate punishment has already been meted out in State court. Only in exceptional cases, where the enormity of the offense justifies, will the Bureau recommend prosecution in Federal court if the case already has been handled in a State tribunal. In forwarding to the Bureau cases in which the accused has already been prosecuted in the State court, the warden should furnish good and sufficient reasons why Federal prosecution should be instituted.



## COOPERATION WITH STATE AUTHORITIES.

Evidence of violations committed contrary to both Federal and State laws should first be transmitted to the Bureau for disposition, but evidence of offenses committed in violation of State laws only should be forwarded promptly to the proper State authority for prosecution. Wardens should use every endeavor consistent with the discharge of their duties in the enforcement of the Federal law to secure evidence of State violations and, in addition to transmitting the evidence to the proper State authority, should report all such cases to the Bureau, including final disposition in State court.

## AFFIDAVITS.

Affidavits should be carefully prepared and should contain a clear and concise statement of the facts within the personal knowledge of the affiant. They must show that a violation of the law has occurred, the place where, and the date on which it occurred. Hearsay evidence, irrelevant matter, and facts which may be used by way of defense should be omitted from the affidavit but, for the information of the Bureau, should be stated in a report or letter accompanying the affidavit.

When practicable witness affidavits should be sworn to before a U. S. game warden who has been authorized under the provisions of the Act of Congress of January 31, 1925, to administer oaths (the Department seal will be affixed to such affidavits when received in the Bureau); otherwise, before a clerk or deputy clerk of a United States court or a United States commissioner, who shall receive no fee for administering the oath as they are paid their fees on the rendition of accounts to the Treasury Department. When expense is involved by a person other than a U. S. game warden in connection with obtaining an affidavit, it will be necessary to submit an explanation before the item can be passed for payment.

If such an officer is not available, an affidavit may be sworn to before a notary public or justice of the peace having a seal, care being exercised that such seal is properly affixed to the affidavit; if such officer has no seal, it will be necessary to have affixed to the affidavit the county clerk's certificate of authentication. A warden may claim reimbursement in his account for fees thus paid to a notary, justice of the peace, or county clerk.

## ARREST IN GENERAL.

A warden should sufficiently familiarize himself with the practice and procedure in criminal cases to avoid exceeding his authority. If a warden who acts within the scope of his employment and within his authority is sued on that account the Department of Justice will be requested to assist in his defense; but, if a warden knowingly exceeds his authority and gets into difficulties, he must personally defend himself.

No hard and fast rule as to when an arrest should be made can be stated; an employee must exercise his judgment. Usually no arrest should be made in trifling or technical cases; but in dealing with such cases great care must be exercised to avoid the appearance of partiality, and reports thereof should be forwarded promptly to the Bureau. No consideration of prominence or influence, when the offending party is of the age of mature judgment, should cause a warden to deviate from his duty of insisting that the law be observed.

A warden may make an arrest when armed with a warrant issued by a



court having competent jurisdiction, or without a warrant when the offense is committed in the warden's presence or view, in which event the arrest must be made immediately. An arrest without a warrant must not be made unless the violation is committed in the presence or view of the warden. The procedure in making arrests with and without warrants is hereinafter stated separately.

An arrest on a warrant must be made for the purpose stated therein and, if the accused so demands, the warrant must be read to him as soon as the warden can do so without danger to himself or of the escape of the accused. When the arrest is made for an offense committed within the view of a warden he should inform the accused of the reason for making it.

It may be unnecessary, at the time the offense is committed, to make an arrest when the warden knows the accused, or has at the time established the latter's identity, so that he can be located thereafter and arrested on a warrant. The main thing is to take proper steps to prevent the escape of the accused.

When an immediate arrest is not made no warrant of arrest should be secured, in usual cases, but the warden should promptly furnish the Bureau with his report of the violation, his affidavit of facts, and the affidavits of other material witnesses.

In case the accused is known to, or his identity has been fully established by, the warden, it would be good practice, as a rule, to make no arrest if the accused will voluntarily appear before a commissioner at a time to be agreed upon and will permit the warden to take and hold for use as evidence any articles the warden may desire for that purpose. Even the appearance of an accused before a commissioner should be required only if circumstances justify, as the accused can be proceeded against by information. In such cases the warden should secure, if possible, a written confession of the accused, if he is willing voluntarily to make a confession, and, in any event, should secure a written statement in which the accused agrees to appear before a commissioner, if such appearance is deemed necessary, and consents to the warden holding any articles for use as evidence. If the accused refuses to give such consent and there is danger that he may escape, unless the articles mentioned are held for use as evidence against him, the warden should make an immediate arrest and take him before a commissioner, in which event the warden, of course, would seize any of the articles enumerated above found on the accused that may be needed as evidence and hold them for use at the trial.

It is not proper to release a person under arrest after making a seizure, and it is always best when an arrest is made to take the accused immediately before the commissioner for proper action. If an arrest has been made and good reasons develop for releasing the prisoner, the warden should ask him if he cares to make a statement, oral or in writing, and whether he will leave his gun, etc., with the warden. The warden must caution the prisoner that his statement may be used against him in any trial that may result.

When no arrest is made or it is impracticable or unnecessary to take

an accused before the commissioner, the accused will be proceeded against by information prepared by the Solicitor of the Department upon receipt of the warden's report and affidavit of the facts.

#### ARREST WITHOUT WARRANT.

The usual mode of procedure is here given. The practice may vary somewhat in different States, making it necessary for a warden to familiarize himself with the State laws governing court procedure in his district.

When a violation is committed in the view of a warden he should immediately arrest the offender and take him before the nearest United States commissioner, or other magistrate or official, mentioned in Section 1014 of the United States Revised Statutes, unless the violator is well known to the employee and satisfactory arrangements can be made for the accused to appear before a commissioner or magistrate, if such appearance is deemed necessary by the warden, at a more convenient time in the near future; such an arrangement should be made only when the warden is satisfied that the accused will so appear, or, in case of his failure, that he can be easily located and arrested thereafter on a warrant.

In case the accused is not arrested, a report of the case together with affidavits of the witnesses should be forwarded promptly to the Bureau in order that the case may be transmitted to the Department of Justice for prosecution.

When the offender under arrest without warrant is brought before the magistrate a complaint should be prepared, sworn to before, and filed with, the magistrate, who will immediately inform the accused of the charge against him and of his right to the aid of counsel at every stage of the proceeding, and before any proceedings are had. If he does not desire counsel the accused must plead to the charge - either "guilty" or "not guilty." The accused may waive or demand an examination. Each step in the proceeding will be recorded by the magistrate in his docket.

In case of a plea of "guilty" or if examination is waived the magistrate will commit the defendant, fix bail immediately, and require the accused to give bond for his appearance at the next term of the United States court in the district in which the crime was committed. If an examination is demanded, the hearing may be had at once, or an adjournment had to a convenient date. In case of an adjournment the accused should be committed, bail fixed by the magistrate, and the accused required to give a bond for his appearance at the examination. If the bond be not given, the warden should take the accused to the county jail designated in warrant of commitment there to be confined until the hearing is held, or to await the action of the next term of the United States court having jurisdiction of the case.

In all cases a certified copy of the warrant of commitment must be delivered to the sheriff or jailor as his authority to hold the prisoner, and the original warrant shall be returned to the proper court or officer, with the warden's return thereon.



The warden and the witnesses must be present at the hearing to testify to the facts tending to show that the accused is guilty of the charge made against him.

To authorize the commissioner or magistrate in an examination of an offender to commit he need not be convinced beyond a reasonable doubt of the guilt of the accused, but the proof should be such as to afford probable cause to believe that the offense was committed, and by the accused.

If the evidence shows the existence of probable cause for believing the accused to be guilty of the offense, the magistrate should commit him for the action of the United States court in the district where the crime was committed, fix bail, and require the accused to give bond for his appearance. In default of bail being given the accused should be confined in the jail designated in the warrant of commitment.

In all cases of arrest without warrant the warden should promptly report the facts to the Bureau, accompanied by witness affidavits.

#### ARREST WITH WARRANT.

Where an offense is not committed within view of the warden he should ascertain the material facts and report the case promptly to the Bureau with affidavits of the witnesses. If the papers tend to establish that a crime has been committed they will be transmitted to the Department of Justice for appropriate action.

An emergency may arise requiring the prompt issuance of a warrant in order to prevent the escape of an accused person and in such cases a warden should apply to one of the officials named in Section 1014 of the United States Revised Statutes, preferably the nearest United States commissioner, for a warrant commanding the arrest of the accused.

To obtain a warrant it is necessary to comply with certain conditions in order to give the magistrate jurisdiction. A complaint must be prepared showing the fact that a crime has been committed, and that the accused committed it; the complaint must be made by a person cognizant of the facts, sworn to before, and filed with, the magistrate.

The complaint should be carefully drawn, showing in the most direct language who is alleged to have committed the violation, the time and place where the alleged violation was committed, and what acts the accused committed which constitute the violation; and should allege that the acts stated were contrary to the Migratory Bird Treaty Act approved July 3, 1918.

If these papers are in proper form and the charges contained in the complaint tend to establish that a crime has been committed, and that the person named is guilty of a crime, the commissioner or other magistrate will issue a warrant for the arrest of the accused person.

The warrant for the arrest of the accused may be executed by any warden to whom it may be directed. The execution of the warrant consists

of taking into custody the person named therein. The warden should make his return, which consists of the production of the accused before the commissioner or magistrate, together with the warrant endorsed on the back thereof to show execution.

Before a warden serves any warrant or other court process he should carefully scrutinize the document for any defects or omissions; if he executes a defective process he may become personally liable.

#### EXPENSES EXECUTING PROCESS.

When a warrant of arrest or a search warrant, issued by a court or officer of competent jurisdiction, in connection with violations of the Migratory Bird Treaty Act, is executed by a United States game warden or one of his deputies, the expenses of the warden and any prisoner prior to his commitment are a charge against the appropriation "General Expenses Bureau of Biological Survey - Protection of Migratory Birds."

When such a warrant is executed by a marshal of the United States or one of his deputies, and the marshal is accompanied by a game warden, the expenses of the marshal and any prisoner are a charge against the appropriation to the Department of Justice, and the expenses of the warden are a charge against the appropriation for the protection of migratory birds.

The expenses incurred in executing a warrant of commitment, whether by a marshal or a game warden, are chargeable against the appropriation to the Department of Justice. In case a warrant of commitment is executed by a game warden his expense account should be rendered to the marshal for approval and put in the way of payment.

When a warrant is executed by a marshal the game warden must not pay any part of the expense of the marshal and prisoner and claim reimbursement therefor.

#### MEMORANDA OF OBSERVATIONS.

All wardens, except those occupying cooperative positions, must keep diaries containing detailed records of their itineraries and of their activities. Immediately after making an arrest, while the circumstances are fresh in his mind, a warden must make full and complete notes in his diary of his observations of the actions of the accused, and mark for identification any contraband birds seized. The notes must contain the following data: (1) Full name and address of the accused; (2) time when, and place where, the violation was committed; (3) particular acts, which can be proved, constituting the violation; (4) number and kinds of birds seized; (5) statements made by accused when arrested; (6) names and addresses of persons present at time the violation was committed or when any statement was made by accused; (7) any other facts observed in connection with the case.

In cases of illegal killing of birds reference should be made to the distance between the warden and the accused at the time of the commission of the violation; and, if it occurred between sunset and half an hour before



sunrise, the exact time of its commission should be given as shown by the warden's watch, the correctness of which should be verified, if possible. In brief, all facts and circumstances having a direct bearing on the case should be recorded to be later used in refreshing the warden's memory when in court to give his testimony. Such memoranda may be used to refresh the memory of a witness only when it was made at the time when the event occurred or immediately thereafter.

It should never be assumed that an accused person will plead guilty and that it is unnecessary to take proper precautions to preserve the evidence of guilt. Proceed in each case as though it is to be hotly contested and leave nothing undone that should be attended to in order to establish the guilt of the accused.

#### PRESERVATION OF EXHIBITS.

Migratory birds possessed contrary to law must be seized immediately by a warden, properly marked, and preserved, if possible, in their original condition for future use as evidence. Birds so seized must be marked or tagged forthwith for identification by the warden making the seizure with the following information: (1) Date of seizure; (2) place of seizure; (3) name and address of person from whom seized; (4) species seized; (5) quantity seized; (6) witnesses present when seizure was made.

When dead birds seized are to be preserved for future use as evidence they should be placed promptly either in a convenient cold storage in the name of the United States Department of Agriculture, Bureau of Biological Survey, or in a package and sealed in such manner that at any time a warden can swear that the contents of such package are the identical contents that he placed therein. Whenever possible a warden should obtain a written agreement from the person from whom the specimens were seized authorizing them to be turned over to the Bureau for scientific, educational, or food purposes. A duplicate receipt embodying the agreement and specifying the number and species of birds should be executed by the warden and the violator, each of whom should retain a copy. If such a release is given game birds should be given to a hospital, asylum, charitable institution, or institution maintained for the care of the poor, for use as food by the inmates thereof; migratory insectivorous or nongame birds should be given to educational or scientific institutions. The warden should take a receipt from the superintendent, or person in charge of the institution, to whom birds or plumage may be given, showing the number and species of birds or plumage thus donated. In no case should birds be given to individuals or public officials for personal use.

In case a violator refuses to enter into an agreement authorizing birds to be disposed of for food purposes, and it is impossible to preserve them for use as evidence, the warden should retain the heads, wings, and feet of the birds for use as evidence and dispose of the carcasses by gift as stated in the preceding paragraph.

In cases involving seizure of a small number of birds, especially the smaller species, when no agreement to dispose of the birds is obtained from the violator, the birds may be preserved by cutting open the abdomen



and placing them in an ordinary fruit jar filled with a 10 per cent solution of formalin. After remaining in the jar about a week, the birds can be taken out and the carcasses dried after which they will practically mummify and keep indefinitely. Birds thus preserved should be properly tagged for identification before being placed in the preservative. Eternal or waterproof ink should be used in marking tags.

When live birds are seized they must be retained alive in a suitable place for disposition by the court, unless other instructions are received from the Bureau. In the case of live birds wardens should also obtain, whenever possible, a release of the birds to the Bureau.

In cases involving the killing of migratory game birds in excess of the daily bag limit, or shipment in excess of the number authorized by the Federal regulations, all the birds killed or shipped should be seized and handled in accordance with these instructions.

Unless seized migratory birds or plumage are disposed of pursuant to the foregoing instructions they should be held for use as evidence by the warden seizing them, and for disposition by the court, and should not be forwarded to the Bureau, except in doubtful cases, for the purpose of having the specimens or plumes identified. Guns, ammunition, and other paraphernalia used in the illegal procurement of migratory birds and seized for use as evidence should be forwarded to the headquarters of the warden in the district where the seizure is made, to be held there pending disposition of the case. Such articles should be properly marked and tagged for identification. Special care should be exercised to keep the articles in a safe place where they will not be lost or stolen, so that they will be available at the trial and, in proper cases, can be returned to the accused when the case has been terminated.

If, for any reason, an exhibit is to be placed outside of the warden's control or possession he must attach an indestructible marker thereon, so that when it is returned to him he can identify it as the one he had previously in his possession.

#### PURCHASE OF BIRDS OR PLUMAGE FOR USE AS EVIDENCE.

It is unnecessary, except possibly in rare cases, to purchase birds, plumage, or other specimens for use as evidence, as the law makes it unlawful to offer for sale as well as to sell migratory birds or parts thereof and authorizes the immediate seizure of birds or parts thereof that have been exposed or offered for sale. Wardens, therefore, must not, except in rare cases, purchase birds or parts thereof for use as evidence but should immediately seize and hold for use as evidence all such birds or plumage they find offered or exposed for sale.

In some districts Federal judges and United States attorneys hold it to be improper for a Federal officer to purchase, or cause to be purchased, birds from a person in order to get evidence against him, even though such evidence can be secured in no other way. In other jurisdictions the judges and United States attorneys hold a contrary opinion.

You should, therefore, become familiar with the attitude of the Federal judge and United States attorney in your district on this question.

#### PURCHASE OF SUPPLIES.

Wardens must not purchase any equipment or supplies other than subsistence supplies or supplies in connection with minor repairs of boats without being first authorized by the Bureau. Authorization may be obtained by telegraph in emergencies.

#### REPORTS.

Wardens must furnish the Bureau, at the end of each month, with tentative itinerary reports of travel planned by them for the succeeding month, showing places to be visited, with probable dates of arrival and departure, and the places where telegrams can be despatched or mail forwarded to them. In case a tentative itinerary is changed the warden should inform the Bureau by wire, if necessary.

Wardens must also furnish the Bureau, at the end of each week, on blanks furnished by the Bureau for that purpose, with a summary report containing detailed statements of their activities during each week and results accomplished. These reports must be in such detail as to inform the Bureau of the actual work performed and results accomplished each day by wardens, together with the time of arrival at and departure from points between which travel is performed.

Deputy game wardens must render such weekly reports during the time they are employed on per diem service, and a brief summary report of their activities at the end of each fiscal year (June 30).

#### HIRING OF ASSISTANTS.

Wardens must not hire assistants, except boatmen, guides, etc., temporarily, not to exceed 4 or 5 days, without first receiving permission from the Bureau, in which case the name, address, and occupation of such person, together with a statement of the work he is to perform and the reasons therefor must be furnished the Bureau. Temporary assistants should be hired only in exceptional and urgent cases in which the work to be done can not be performed effectively by the warden without an assistant.

A temporary employee does not possess the powers conferred by Section 5 of the Migratory Bird Treaty Act unless he has been regularly appointed by the Secretary of Agriculture to enforce the law, but he may assist a regular employee in making an arrest.

#### FEES.

Wardens and deputy wardens who produce department records or testify in any judicial proceeding in Federal or State courts in any case involving violations of the Migratory Bird Treaty Act or the Lacey Act or in cases originating in the Department shall accept no fees, but their expenses for travel and subsistence will be paid in accordance with the fiscal regulations. (See Paragraph 59, Administrative Regulations.)



U. S. game wardens must not accept any fees, rewards, or remuneration of any kind from State or municipal authorities, sportsmen's organizations, or other sources as payment or reward for securing or assisting in securing cases involving violations of State or Federal game laws or fish laws.

#### TRANSPORTATION REQUESTS.

Transportation requests should be used in paying for railroad transportation except when it may be necessary to pay cash fare in order to conceal the identity of the warden.

#### USE OF PERSONALLY OWNED AUTOMOBILES.

Wardens must not use automobiles, personally owned or hired, in official travel if public means of transportation are available, unless it can be clearly shown that the use of such automobile was to the advantage of the government, resulting in the saving of time, or money, or in the performance of an official duty which could not have been performed as efficiently otherwise. Each account covering actual operating charges or mileage rates for automobiles must be supported by a certificate setting forth, among other things, "that no public or regular means of transportation could be used as advantageously in the interest of the Government."

#### CONCEALED WEAPONS.

A commission as U. S. deputy game warden does not, in itself, give the person appointed to such position the authority to carry a concealed weapon at all times, but he may carry such concealed weapon only when employed on per diem duty by the Bureau.

#### EXAMINATION OF EXPRESS RECORDS.

The general rules of the American Railway Express Company authorize its agents to furnish any officer or agent of the Federal government, in the exercise of his duty, information concerning property in possession of the company for interstate transportation. If an agent of the Express Company unreasonably refuses to give a warden an opportunity to examine express records or to give him assistance to determine whether property in possession of the company is being illegally shipped in interstate commerce, the warden should promptly report the facts to the Bureau.

#### INDIAN RESERVATIONS.

Hunting and fishing rights have generally been reserved for the Indians by treaty, and offenses against either Federal or State game and fish laws committed by Indians on their reservations are left to the action of the tribal authorities. Should offenses against the Migratory Bird Treaty Act become serious, it is very possible that appropriate action may be taken through the Department of the Interior for the enactment of tribal laws conforming to the Federal regulations. U. S. game wardens have no authority to arrest Indians for committing violations on their reservations even though the permission of the superintendents in

charge of the reservations is first obtained. Persons other than Indians, however, may be arrested for violating the Federal laws on Indian reservations and the permission or sanction of the superintendents is not necessary to authorize the arrest. The Department of the Interior having jurisdiction over Indian reservations is, however, in hearty sympathy with efforts to conserve wild life, and wardens, upon visiting reservations, should call upon the superintendents in charge and acquaint themselves with regulations governing Indian country.

#### CORRESPONDENCE AND TELEGRAMS.

All letters to the Bureau should be directed to the "Chief, Biological Survey, Washington, D.C." Communications should be sent to no other Department or Bureau of the Government.

All telegrams to the Bureau should be directed to "Biological Survey, Agriculture, Washington." Telegrams should be used sparingly, but wardens should not hesitate to use them in proper cases, eliminating all unnecessary words. They should not be used in ordering supplies, asking for increased expense allotment, except in emergencies, or, at government expense, in respect to annual or sick leave, or leave without pay.

When writing to the Bureau letters containing information which must be submitted to another warden for further investigation, you should furnish an original and two carbon copies of the letter. The original letter will be retained in the Bureau, one of the copies, with appropriate instructions, will be forwarded to the warden who is to make the further investigation, and the other copy with information as to the disposition of the matter will be returned to you.

No letter should embrace matter concerning more than one subject or case. Write a separate letter on each topic, making each communication full and complete in itself, or if the subject matter is so general in its nature that the letter must necessarily cover more than one case, a sufficient number of carbon copies of the letter should be furnished for filing with each case involved.

Attention is called to the following section of the Administrative Regulations of the U. S. Department of Agriculture:

"147. Names on Letterheads. No individual's name shall appear on the letterheads of any bureau."

The official title and office address may be printed on stationery, provided permission so to do is first obtained from the Bureau.

#### ATTENDANCE AT MEETINGS - Delivery of Lectures.

A warden may attend meetings occurring in the course of his official travel, when such attendance will be in the direct interest of his work, and he may deliver at such meetings lectures of instruction and disseminate information in regard to the work and the Federal game laws.



Travel must not be performed, however, for the sole purpose of attending meetings without first obtaining from the Bureau permission so to do.

A warden must not attend a session of a State legislature or appear before a legislative committee in the interest of legislation unless permission has been first obtained from the Bureau. Such authorization will be granted only when a member of a committee on game of a legislature (preferably the chairman) requests the Bureau to grant such permission.

#### LEAVE OF ABSENCE.

Sections 92 to 138 inclusive, of the Administrative Regulations, as amended, must be strictly followed.

It must be borne in mind that leave of absence is a privilege and not a legal right, and can be granted to a warden only when such leave can be taken without detriment to the service. A warden must anticipate taking annual leave at a time when his services will be least required in his district. This will often obviate the necessity of revoking leave of absence and ordering the warden to return to duty before its expiration.

A warden will not be permitted to take annual leave while in travel status, unless before the commencement of the trip on which he desires to take such leave, he shall have first requested such leave of the Bureau and received permission to take it. Application for such permission shall state the extent of the travel to be performed, the reasons therefor, the time when and place where the warden desires to take leave of absence, and the time when and place where he intends to return to duty.

Deputy wardens and temporary employees are not entitled to leave of absence.

#### EFFICIENCY RATING.

A warden will be rated upon efficiency and in fixing his rating the following matters will be considered:

- (1) General activity:
  - (a) Number of violations reported and the sufficiency of the evidence gathered upon which to base a prosecution.
  - (b) Expenses incurred.
  - (c) Completeness of reports.
  - (d) Knowledge of the law and of conditions.
  - (e) Cooperation with State officials.
- (2) Compliance with fiscal and administrative regulations and the rules of the Bureau.
- (3) Willingness to work.
- (4) Initiative.
- (5) Dispatch.



- (6) Accuracy.
- (7) Neatness.
- (8) Cheerfulness with which duties are performed.
- (9) Personal conduct.
- (10) The general observance of the law by the people in a warden's district, provided it is apparent that the warden was instrumental in bringing about a clean and healthful condition.

No attempt has been made to list these subjects in the order of their importance; suffice it to say that a warden's entire course of conduct and activity will be scrutinized and considered in determining his standard of efficiency.

A warden's efficiency rating will be considered not only in cases of promotion but should a warden's rating warrant so doing he may be demoted, reduced in pay, or dismissed when such action will promote the efficiency of the service. (Section 35, Administrative Regulations, and Rule XII of United States Civil Service Rules.)



## UNITED STATES DEPARTMENT OF AGRICULTURE

## BUREAU OF BIOLOGICAL SURVEY

INSTRUCTIONS FOR THE GUIDANCE OF UNITED STATES  
GAME WARDENS AND DEPUTIES.INTRODUCTION.

This manual is intended as a guide to those whose work is connected with the enforcement of the Migratory-Bird Treaty Act of July 3, 1918, and the provisions of the United States penal code commonly referred to as the Lacey Act, and is especially for the use of game wardens in the field. In part it is explanatory of, but in no way supersedes or modifies, the Administrative and Fiscal Regulations of the Department.

Wardens can not become proficient without being thoroughly familiar with the Administrative and Fiscal Regulations of the Department, the practice and procedure in handling violations, and the provisions of the Migratory Bird Treaty Act, and Regulations and the Lacey Act. In connection with illegal interstate shipments of birds and animals it also is important that wardens become familiar with the provisions of the laws governing the export of birds and animals in the States within their respective districts. It is obviously impracticable to include in a manual of this character all the laws relating to the practice and procedure of the courts in the exercise of their criminal jurisdiction, but it is thought that the instructions contained herein will be helpful to a warden in the discharge of his duties.

Whenever a warden is in doubt as to the law or methods of procedure he should write or wire at once to the Bureau for information, stating the case fully and plainly. Cooperation and advice may also be had from United States Attorneys. The United States customs officials also may often be able to render valuable aid in emergencies.

The efficiency of a warden and his usefulness to the Bureau will depend in a large measure upon his ability to command the respect and confidence of those with whom he comes in contact. He should be courteous and upright at all times in all his dealings. Discourtesy and inefficiency on the part of a warden will not be tolerated by the Bureau.

A warden to be a good officer must be courageous, as well as courteous, but any form of harshness or an overbearing attitude should be avoided. His methods should be direct, orderly, and firm, without provoking resistance. While a warden may exercise reasonable force, when necessary, in effecting an arrest, he should be courteous and considerate to the fullest possible extent. There may be times when a warden must act swiftly and forcibly, in which event a reputation for tact and courtesy will sustain him, if criticized.

Cooperation on the part of the public, and particularly on the part of State and municipal officials, is very necessary for the proper and effective enforcement of the Migratory Bird Treaty Act. These officials in the various branches of the State and municipal governments are all in a

position to render invaluable assistance. A warden should earn the confidence and respect of all such officers and of the public to the end that their cooperation may be ready and voluntary.

#### POWERS OF WARDENS.

The powers of wardens to enforce the provisions of the Migratory Bird Treaty Act are conferred by Section 5 of said Act.

Deputy wardens possess the same police powers as wardens, but they are not authorized to perform travel or incur expenses chargeable to the Bureau without first being specifically authorized by the Bureau; and when so authorized they will be paid a per diem for their services while actually employed and be reimbursed for travel expenses in accordance with the provisions of the Fiscal Regulations of the Department.

Wardens have no power to make arrests or seizures in cases involving violations of the Lacey Act, but in such cases wardens should secure copies of express records, affidavits of express agents as to shipments, affidavits of consignees showing receipt of shipments and other pertinent facts, and also secure from consignees cancelled checks made in payment of shipments, and original correspondence had with consignors. These papers, with the warden's report, should be transmitted to the Bureau for appropriate action.

All birds (migratory and nonmigratory), or parts thereof, nests, or eggs, including the plumage, taken, transported, or possessed contrary to the provisions of the Migratory Bird Treaty Act may be seized and held for use as evidence and for disposition by the court. Plumes of the birds of paradise, goura pigeons, foreign species of herons, and other birds that do not occur in this country are not protected by the Treaty Act, and wardens have no power to seize such plumage, unless transported interstate contrary to State laws, thus bringing it within the provisions of Section 4 of the Treaty Act.

Migratory birds or parts thereof, including the plumage, or their nests and eggs acquired by a person prior to July 3, 1918, the date when the Migratory Bird Treaty Act became effective, and held in possession without a permit by a person for his own use and not for sale should not be seized.

Birds and other articles seized should be suitably marked for identification and safely kept for future disposition.

Wardens are cautioned against making seizures unless the evidence at hand is sufficient to prove beyond a reasonable doubt that the accused is in unlawful possession of the things seized. Any illegal seizure will not only provoke serious criticism of the Bureau, but may lead to an action to recover damages against the warden making the seizure.

When a person commits a violation in view of a warden, or the warden has a warrant for the arrest of a person, the warden may, after the arrest



has been made, search his prisoner and take from his person, and hold for the disposition of the court, any property connected with the offense charged, or that may be used as evidence against him, or any weapon that might enable the prisoner to commit an act of violence or effect his escape.

Wardens have no right to search an accused not under arrest or to take from him any articles for use as evidence without his consent. In a proper case a warden may seize, in addition to contraband birds, the gun, ammunition, hunting license, or other articles found on the person of the accused that may tend to establish his identity or guilt. The fact that the accused intends to plead guilty should not determine the course of a warden in seizing for use as evidence game and implements used in its procurement found on the person of the accused. The principal thing that a warden must have in mind is the securing of sufficient substantial evidence to establish the identity and guilt of the accused in order that a conviction may be had. It must be borne in mind that an accused person intending to plead guilty may change his mind and plead not guilty at the trial.

#### COMPROMISE OF CASES.

Wardens must not settle or compromise any cases or offer immunity to any person accused of violating the law, and they must not accept any sum in payment of fines or other settlement of the case or fix or accept bail in any case. Bail can be fixed and accepted only by one of the officials named in Section 1074 of the Revised Statutes of the United States, and accused persons can be fined or imprisoned only by Federal court or Federal judge.

#### DUTIES.

Wardens are appointed for the specific purpose of enforcing the provisions of the Migratory Bird Treaty Act and the regulations thereunder and Sections 241-244 of the United States Penal Code, commonly referred to as the Lacey Act, and the authority so conferred may be exercised in any part of the United States, subject only to such limitations as may be prescribed by the Bureau.

Deputy wardens holding positions as State wardens may render incidental services in the enforcement of State game laws during the time they are rendering per diem service for the Bureau, but all cases of violations of the Federal laws that may come to their notice during the time they are rendering such per diem service must be reported to the Bureau for disposition.

All wardens, except those occupying cooperative positions, shall devote their entire time to the service and shall not be engaged in any other business, either public or private. (See Sec. 44, Administrative Regulations.)

No travel at government expense shall be performed by a warden, except under specific instructions from the Bureau.



A warden will be restricted in the discharge of his duties to the district covered in his letter of authorization, but he may travel in territory contiguous to his district when violations are being committed there, within his view or hearing, or if the pursuit of a violator requires a warden to enter such contiguous territory.

It shall be the duty of a warden to familiarize himself with migratory bird conditions in his district and especially in those sections wherein the law is most frequently violated. The important hunting sections should be visited as frequently as the warden's allotment for travel expenses will permit and good reasons exist for believing that conditions require his presence.

He must not only do patrol duty in the ordinary sense of the word, but he must endeavor to anticipate the movements of those who would violate the law. He must be alert, study the methods of violators, cultivate the friendship of law-abiding people, and open channels for information concerning those things of which he ought to get early knowledge.

#### PROCEDURE.

Section 1014 of the Revised Statutes of the United States provides:

"For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizance of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

This section relates to natural persons and does not apply to corporations which will be proceeded against as hereinafter mentioned.

In cases involving firms, copartnerships, or corporations special care should be taken to ascertain the full names and addresses of all the partners of a firm or copartnership, the full, correct name of a corporation, the State under whose laws it is incorporated, date of incorporation, its principal place of business, and the full names and addresses of the principal officers.

While there are numerous officers given authority by Section 1014 to hold preliminary hearings it is the proper practice to go before the nearest United States commissioner.

Officials named in said Section 1014 customarily follow the practice in State courts. Wardens, therefore, must familiarize themselves with State laws on the subject of issuing and serving warrants, and in all cases where warrants are issued by State or municipal officials be guided by the provisions of State laws relating to the serving of such writs,

#### PROCEEDINGS AGAINST CORPORATIONS.

Corporations can not be prosecuted in the same manner as individuals. In a case against a corporation a warden will prepare separate affidavits for each witness, have them signed and executed before an officer authorized to administer oaths, and transmit the affidavits to the Bureau, with a report of the case.

#### CONFESSIONS.

A confession not made in open court can not be relied upon to secure a conviction unless it is supported by other evidence tending to show that the particular offense was committed. A confession is a voluntary declaration by a person who has committed an offense and, to be admissible as evidence against the accused, it must be clearly shown that it was free and voluntary. Defendants frequently deny their confessions when confronted by them in court and it is important, therefore, that wardens procure, in addition to the confession, affidavits from persons who have some personal knowledge of the commission of the offense. No difficulty arises if the party making the confession can be taken immediately before the court and pleads guilty. In such cases, the warden should consult with the U. S. Attorney who, no doubt, will be willing to expedite the prosecution. It is proper for a warden to interview or write to an alleged violator for the purpose of obtaining any statement he may care to make concerning the alleged violation. In writing to such person the warden should be careful not to use any sarcastic language or threats. The letter should be prepared in such manner as to be least calculated to give offense.

#### PROSECUTION IN FEDERAL COURT AFTER CONVICTION IN STATE COURT.

An act committed in violation of both Federal and State laws can be prosecuted in either Federal or State court, or in both, but the Federal courts are loathe to impose a second punishment where adequate punishment has already been meted out in State court. Only in exceptional cases, where the enormity of the offense justifies, will the Bureau recommend prosecution in Federal court if the case already has been handled in a State tribunal. In forwarding to the Bureau cases in which the accused has already been prosecuted in the State court, the warden should furnish good and sufficient reasons why Federal prosecution should be instituted.

## COOPERATION WITH STATE AUTHORITIES.

Evidence of violations committed contrary to both Federal and State laws should first be transmitted to the Bureau for disposition, but evidence of offenses committed in violation of State laws only should be forwarded promptly to the proper State authority for prosecution. Wardens should use every endeavor consistent with the discharge of their duties in the enforcement of the Federal law to secure evidence of State violations and, in addition to transmitting the evidence to the proper State authority, should report all such cases to the Bureau, including final disposition in State court.

## AFFIDAVITS.

Affidavits should be carefully prepared and should contain a clear and concise statement of the facts within the personal knowledge of the affiant. They must show that a violation of the law has occurred, the place where, and the date on which it occurred. Hearsay evidence, irrelevant matter, and facts which may be used by way of defense should be omitted from the affidavit but, for the information of the Bureau, should be stated in a report or letter accompanying the affidavit.

When practicable witness affidavits should be sworn to before a U. S. game warden who has been authorized under the provisions of the Act of Congress of January 31, 1925, to administer oaths (the Department seal will be affixed to such affidavits when received in the Bureau); otherwise, before a clerk or deputy clerk of a United States court or a United States commissioner, who shall receive no fee for administering the oath as they are paid their fees on the rendition of accounts to the Treasury Department. When expense is involved by a person other than a U. S. game warden in connection with obtaining an affidavit, it will be necessary to submit an explanation before the item can be passed for payment.

If such an officer is not available, an affidavit may be sworn to before a notary public or justice of the peace having a seal, care being exercised that such seal is properly affixed to the affidavit; if such officer has no seal, it will be necessary to have affixed to the affidavit the county clerk's certificate of authentication. A warden may claim reimbursement in his account for fees thus paid to a notary, justice of the peace, or county clerk.

## ARREST IN GENERAL.

A warden should sufficiently familiarize himself with the practice and procedure in criminal cases to avoid exceeding his authority. If a warden who acts within the scope of his employment and within his authority is sued on that account the Department of Justice will be requested to assist in his defense; but, if a warden knowingly exceeds his authority and gets into difficulties, he must personally defend himself.

No hard and fast rule as to when an arrest should be made can be stated; an employee must exercise his judgment. Usually no arrest should be made in trifling or technical cases; but in dealing with such cases great care must be exercised to avoid the appearance of partiality, and reports thereof should be forwarded promptly to the Bureau. No consideration of prominence or influence, when the offending party is of the age of mature judgment, should cause a warden to deviate from his duty of insisting that the law be observed.

A warden may make an arrest when armed with a warrant issued by a



court having competent jurisdiction, or without a warrant when the offense is committed in the warden's presence or view, in which event the arrest must be made immediately. An arrest without a warrant must not be made unless the violation is committed in the presence or view of the warden. The procedure in making arrests with and without warrants is hereinafter stated separately.

An arrest on a warrant must be made for the purpose stated therein and, if the accused so demands, the warrant must be read to him as soon as the warden can do so without danger to himself or of the escape of the accused. When the arrest is made for an offense committed within the view of a warden he should inform the accused of the reason for making it.

It may be unnecessary, at the time the offense is committed, to make an arrest when the warden knows the accused, or has at the time established the latter's identity, so that he can be located thereafter and arrested on a warrant. The main thing is to take proper steps to prevent the escape of the accused.

When an immediate arrest is not made no warrant of arrest should be secured, in usual cases, but the warden should promptly furnish the Bureau with his report of the violation, his affidavit of facts, and the affidavits of other material witnesses.

In case the accused is known to, or his identity has been fully established by, the warden, it would be good practice, as a rule, to make no arrest if the accused will voluntarily appear before a commissioner at a time to be agreed upon and will permit the warden to take and hold for use as evidence any articles the warden may desire for that purpose. Even the appearance of an accused before a commissioner should be required only if circumstances justify, as the accused can be proceeded against by information. In such cases the warden should secure, if possible, a written confession of the accused, if he is willing voluntarily to make a confession, and, in any event, should secure a written statement in which the accused agrees to appear before a commissioner, if such appearance is deemed necessary, and consents to the warden holding any articles for use as evidence. If the accused refuses to give such consent and there is danger that he may escape, unless the articles mentioned are held for use as evidence against him, the warden should make an immediate arrest and take him before a commissioner, in which event the warden, of course, would seize any of the articles enumerated above found on the accused that may be needed as evidence and hold them for use at the trial.

It is not proper to release a person under arrest after making a seizure, and it is always best when an arrest is made to take the accused immediately before the commissioner for proper action. If an arrest has been made and good reasons develop for releasing the prisoner, the warden should ask him if he cares to make a statement, oral or in writing, and whether he will leave his gun, etc., with the warden. The warden must caution the prisoner that his statement may be used against him in any trial that may result.

When no arrest is made or it is impracticable or unnecessary to take



an accused before the commissioner, the accused will be proceeded against by information prepared by the Solicitor of the Department upon receipt of the warden's report and affidavit of the facts.

#### ARREST WITHOUT WARRANT.

The usual mode of procedure is here given. The practice may vary somewhat in different States, making it necessary for a warden to familiarize himself with the State laws governing court procedure in his district.

When a violation is committed in the view of a warden he should immediately arrest the offender and take him before the nearest United States commissioner, or other magistrate or official, mentioned in Section 1014 of the United States Revised Statutes, unless the violator is well known to the employee and satisfactory arrangements can be made for the accused to appear before a commissioner or magistrate, if such appearance is deemed necessary by the warden, at a more convenient time in the near future; such an arrangement should be made only when the warden is satisfied that the accused will so appear, or, in case of his failure, that he can be easily located and arrested thereafter on a warrant.

In case the accused is not arrested, a report of the case together with affidavits of the witnesses should be forwarded promptly to the Bureau in order that the case may be transmitted to the Department of Justice for prosecution.

When the offender under arrest without warrant is brought before the magistrate a complaint should be prepared, sworn to before, and filed with, the magistrate, who will immediately inform the accused of the charge against him and of his right to the aid of counsel at every stage of the proceeding, and before any proceedings are had. If he does not desire counsel the accused must plead to the charge - either "guilty" or "not guilty." The accused may waive or demand an examination. Each step in the proceeding will be recorded by the magistrate in his docket.

In case of a plea of "guilty" or if examination is waived the magistrate will commit the defendant, fix bail immediately, and require the accused to give bond for his appearance at the next term of the United States court in the district in which the crime was committed. If an examination is demanded, the hearing may be had at once, or an adjournment had to a convenient date. In case of an adjournment the accused should be committed, bail fixed by the magistrate, and the accused required to give a bond for his appearance at the examination. If the bond be not given, the warden should take the accused to the county jail designated in warrant of commitment there to be confined until the hearing is held, or to await the action of the next term of the United States court having jurisdiction of the case.

In all cases a certified copy of the warrant of commitment must be delivered to the sheriff or jailor as his authority to hold the prisoner, and the original warrant shall be returned to the proper court or officer, with the warden's return thereon.

The warden and the witnesses must be present at the hearing to testify to the facts tending to show that the accused is guilty of the charge made against him.

To authorize the commissioner or magistrate in an examination of an offender to commit he need not be convinced beyond a reasonable doubt of the guilt of the accused, but the proof should be such as to afford probable cause to believe that the offense was committed, and by the accused.

If the evidence shows the existence of probable cause for believing the accused to be guilty of the offense, the magistrate should commit him for the action of the United States court in the district where the crime was committed, fix bail, and require the accused to give bond for his appearance. In default of bail being given the accused should be confined in the jail designated in the warrant of commitment.

In all cases of arrest without warrant the warden should promptly report the facts to the Bureau, accompanied by witness affidavits.

#### ARREST WITH WARRANT.

Where an offense is not committed within view of the warden he should ascertain the material facts and report the case promptly to the Bureau with affidavits of the witnesses. If the papers tend to establish that a crime has been committed they will be transmitted to the Department of Justice for appropriate action.

An emergency may arise requiring the prompt issuance of a warrant in order to prevent the escape of an accused person and in such cases a warden should apply to one of the officials named in Section 1014 of the United States Revised Statutes, preferably the nearest United States commissioner, for a warrant commanding the arrest of the accused.

To obtain a warrant it is necessary to comply with certain conditions in order to give the magistrate jurisdiction. A complaint must be prepared showing the fact that a crime has been committed, and that the accused committed it; the complaint must be made by a person cognizant of the facts, sworn to before, and filed with, the magistrate.

The complaint should be carefully drawn, showing in the most direct language who is alleged to have committed the violation, the time and place where the alleged violation was committed, and what acts the accused committed which constitute the violation; and should allege that the acts stated were contrary to the Migratory Bird Treaty Act approved July 3, 1918.

If these papers are in proper form and the charges contained in the complaint tend to establish that a crime has been committed, and that the person named is guilty of a crime, the commissioner or other magistrate will issue a warrant for the arrest of the accused person.

The warrant for the arrest of the accused may be executed by any warden to whom it may be directed. The execution of the warrant consists



of taking into custody the person named therein. The warden should make his return, which consists of the production of the accused before the commissioner or magistrate, together with the warrant endorsed on the back thereof to show execution.

Before a warden serves any warrant or other court process he should carefully scrutinize the document for any defects or omissions; if he executes a defective process he may become personally liable.

#### EXPENSES EXECUTING PROCESS.

When a warrant of arrest or a search warrant, issued by a court or officer of competent jurisdiction, in connection with violations of the Migratory Bird Treaty Act, is executed by a United States game warden or one of his deputies, the expenses of the warden and any prisoner prior to his commitment are a charge against the appropriation "General Expenses Bureau of Biological Survey - Protection of Migratory Birds."

When such a warrant is executed by a marshal of the United States or one of his deputies, and the marshal is accompanied by a game warden, the expenses of the marshal and any prisoner are a charge against the appropriation to the Department of Justice, and the expenses of the warden are a charge against the appropriation for the protection of migratory birds.

The expenses incurred in executing a warrant of commitment, whether by a marshal or a game warden, are chargeable against the appropriation to the Department of Justice. In case a warrant of commitment is executed by a game warden his expense account should be rendered to the marshal for approval and put in the way of payment.

When a warrant is executed by a marshal the game warden must not pay any part of the expense of the marshal and prisoner and claim reimbursement therefor.

#### MEMORANDA OF OBSERVATIONS.

All wardens, except those occupying cooperative positions, must keep diaries containing detailed records of their itineraries and of their activities. Immediately after making an arrest, while the circumstances are fresh in his mind, a warden must make full and complete notes in his diary of his observations of the actions of the accused, and mark for identification any contraband birds seized. The notes must contain the following data: (1) Full name and address of the accused; (2) time when, and place where, the violation was committed; (3) particular acts, which can be proved, constituting the violation; (4) number and kinds of birds seized; (5) statements made by accused when arrested; (6) names and addresses of persons present at time the violation was committed or when any statement was made by accused; (7) any other facts observed in connection with the case.

In cases of illegal killing of birds reference should be made to the distance between the warden and the accused at the time of the commission of the violation; and, if it occurred between sunset and half an hour before

sunrise, the exact time of its commission should be given as shown by the warden's watch, the correctness of which should be verified, if possible. In brief, all facts and circumstances having a direct bearing on the case should be recorded to be later used in refreshing the warden's memory when in court to give his testimony. Such memoranda may be used to refresh the memory of a witness only when it was made at the time when the event occurred or immediately thereafter.

It should never be assumed that an accused person will plead guilty and that it is unnecessary to take proper precautions to preserve the evidence of guilt. Proceed in each case as though it is to be hotly contested and leave nothing undone that should be attended to in order to establish the guilt of the accused.

#### PRESERVATION OF EXHIBITS.

Migratory birds possessed contrary to law must be seized immediately by a warden, properly marked, and preserved, if possible, in their original condition for future use as evidence. Birds so seized must be marked or tagged forthwith for identification by the warden making the seizure with the following information: (1) Date of seizure; (2) place of seizure; (3) name and address of person from whom seized; (4) species seized; (5) quantity seized; (6) witnesses present when seizure was made.

When dead birds seized are to be preserved for future use as evidence they should be placed promptly either in a convenient cold storage in the name of the United States Department of Agriculture, Bureau of Biological Survey, or in a package and sealed in such manner that at any time a warden can swear that the contents of such package are the identical contents that he placed therein. Whenever possible a warden should obtain a written agreement from the person from whom the specimens were seized authorizing them to be turned over to the Bureau for scientific, educational, or food purposes. A duplicate receipt embodying the agreement and specifying the number and species of birds should be executed by the warden and the violator, each of whom should retain a copy. If such a release is given game birds should be given to a hospital, asylum, charitable institution, or institution maintained for the care of the poor, for use as food by the inmates thereof; migratory insectivorous or nongame birds should be given to educational or scientific institutions. The warden should take a receipt from the superintendent, or person in charge of the institution, to whom birds or plumage may be given, showing the number and species of birds or plumage thus donated. In no case should birds be given to individuals or public officials for personal use.

In case a violator refuses to enter into an agreement authorizing birds to be disposed of for food purposes, and it is impossible to preserve them for use as evidence, the warden should retain the heads, wings, and feet of the birds for use as evidence and dispose of the carcasses by gift as stated in the preceding paragraph.

In cases involving seizure of a small number of birds, especially the smaller species, when no agreement to dispose of the birds is obtained from the violator, the birds may be preserved by cutting open the abdomen



and placing them in an ordinary fruit jar filled with a 10 per cent solution of formalin. After remaining in the jar about a week, the birds can be taken out and the carcasses dried after which they will practically mummify and keep indefinitely. Birds thus preserved should be properly tagged for identification before being placed in the preservative. Eternal or waterproof ink should be used in marking tags.

When live birds are seized they must be retained alive in a suitable place for disposition by the court, unless other instructions are received from the Bureau. In the case of live birds wardens should also obtain, whenever possible, a release of the birds to the Bureau.

In cases involving the killing of migratory game birds in excess of the daily bag limit, or shipment in excess of the number authorized by the Federal regulations, all the birds killed or shipped should be seized and handled in accordance with these instructions.

Unless seized migratory birds or plumage are disposed of pursuant to the foregoing instructions they should be held for use as evidence by the warden seizing them, and for disposition by the court, and should not be forwarded to the Bureau, except in doubtful cases, for the purpose of having the specimens or plumes identified. Guns, ammunition, and other paraphernalia used in the illegal procurement of migratory birds and seized for use as evidence should be forwarded to the headquarters of the warden in the district where the seizure is made, to be held there pending disposition of the case. Such articles should be properly marked and tagged for identification. Special care should be exercised to keep the articles in a safe place where they will not be lost or stolen, so that they will be available at the trial and, in proper cases, can be returned to the accused when the case has been terminated.

If, for any reason, an exhibit is to be placed outside of the warden's control or possession he must attach an indestructible marker thereon, so that when it is returned to him he can identify it as the one he had previously in his possession.

#### PURCHASE OF BIRDS OR PLUMAGE FOR USE AS EVIDENCE.

It is unnecessary, except possibly in rare cases, to purchase birds, plumage, or other specimens for use as evidence, as the law makes it unlawful to offer for sale as well as to sell migratory birds or parts thereof and authorizes the immediate seizure of birds or parts thereof that have been exposed or offered for sale. Wardens, therefore, must not, except in rare cases, purchase birds or parts thereof for use as evidence but should immediately seize and hold for use as evidence all such birds or plumage they find offered or exposed for sale.

In some districts Federal judges and United States attorneys hold it to be improper for a Federal officer to purchase, or cause to be purchased, birds from a person in order to get evidence against him, even though such evidence can be secured in no other way. In other jurisdictions the judges and United States attorneys hold a contrary opinion.

You should, therefore, become familiar with the attitude of the Federal judge and United States attorney in your district on this question.

#### PURCHASE OF SUPPLIES.

Wardens must not purchase any equipment or supplies other than subsistence supplies or supplies in connection with minor repairs of boats without being first authorized by the Bureau. Authorization may be obtained by telegraph in emergencies.

#### REPORTS.

Wardens must furnish the Bureau, at the end of each month, with tentative itinerary reports of travel planned by them for the succeeding month, showing places to be visited, with probable dates of arrival and departure, and the places where telegrams can be despatched or mail forwarded to them. In case a tentative itinerary is changed the warden should inform the Bureau by wire, if necessary.

Wardens must also furnish the Bureau, at the end of each week, on blanks furnished by the Bureau for that purpose, with a summary report containing detailed statements of their activities during each week and results accomplished. These reports must be in such detail as to inform the Bureau of the actual work performed and results accomplished each day by wardens, together with the time of arrival at and departure from points between which travel is performed.

Deputy game wardens must render such weekly reports during the time they are employed on per diem service, and a brief summary report of their activities at the end of each fiscal year (June 30).

#### HIRING OF ASSISTANTS.

Wardens must not hire assistants, except boatmen, guides, etc., temporarily, not to exceed 4 or 5 days, without first receiving permission from the Bureau, in which case the name, address, and occupation of such person, together with a statement of the work he is to perform and the reasons therefor must be furnished the Bureau. Temporary assistants should be hired only in exceptional and urgent cases in which the work to be done can not be performed effectively by the warden without an assistant.

A temporary employee does not possess the powers conferred by Section 5 of the Migratory Bird Treaty Act unless he has been regularly appointed by the Secretary of Agriculture to enforce the law, but he may assist a regular employee in making an arrest.

#### FEES.

Wardens and deputy wardens who produce department records or testify in any judicial proceeding in Federal or State courts in any case involving violations of the Migratory Bird Treaty Act or the Lacey Act or in cases originating in the Department shall accept no fees, but their expenses for travel and subsistence will be paid in accordance with the fiscal regulations. (See Paragraph 59, Administrative Regulations.)

U. S. game wardens must not accept any fees, rewards, or remuneration of any kind from State or municipal authorities, sportsmen's organizations, or other sources as payment or reward for securing or assisting in securing cases involving violations of State or Federal game laws or fish laws.

#### TRANSPORTATION REQUESTS.

Transportation requests should be used in paying for railroad transportation except when it may be necessary to pay cash fare in order to conceal the identity of the warden.

#### USE OF PERSONALLY OWNED AUTOMOBILES.

Wardens must not use automobiles, personally owned or hired, in official travel if public means of transportation are available, unless it can be clearly shown that the use of such automobile was to the advantage of the government, resulting in the saving of time, or money, or in the performance of an official duty which could not have been performed as efficiently otherwise. Each account covering actual operating charges or mileage rates for automobiles must be supported by a certificate setting forth, among other things, "that no public or regular means of transportation could be used as advantageously in the interest of the Government."

#### CONCEALED WEAPONS.

A commission as U. S. deputy game warden does not, in itself, give the person appointed to such position the authority to carry a concealed weapon at all times, but he may carry such concealed weapon only when employed on per diem duty by the Bureau.

#### EXAMINATION OF EXPRESS RECORDS.

The general rules of the American Railway Express Company authorize its agents to furnish any officer or agent of the Federal government, in the exercise of his duty, information concerning property in possession of the company for interstate transportation. If an agent of the Express Company unreasonably refuses to give a warden an opportunity to examine express records or to give him assistance to determine whether property in possession of the company is being illegally shipped in interstate commerce, the warden should promptly report the facts to the Bureau.

#### INDIAN RESERVATIONS.

Hunting and fishing rights have generally been reserved for the Indians by treaty, and offenses against either Federal or State game and fish laws committed by Indians on their reservations are left to the action of the tribal authorities. Should offenses against the Migratory Bird Treaty Act become serious, it is very possible that appropriate action may be taken through the Department of the Interior for the enactment of tribal laws conforming to the Federal regulations. U. S. game wardens have no authority to arrest Indians for committing violations on their reservations even though the permission of the superintendents in



charge of the reservations is first obtained. Persons other than Indians, however, may be arrested for violating the Federal laws on Indian reservations and the permission or sanction of the superintendents is not necessary to authorize the arrest. The Department of the Interior having jurisdiction over Indian reservations is, however, in hearty sympathy with efforts to conserve wild life, and wardens, upon visiting reservations, should call upon the superintendents in charge and acquaint themselves with regulations governing Indian country.

#### CORRESPONDENCE AND TELEGRAMS.

All letters to the Bureau should be directed to the "Chief, Biological Survey, Washington, D.C." Communications should be sent to no other Department or Bureau of the Government.

All telegrams to the Bureau should be directed to "Biological Survey, Agriculture, Washington." Telegrams should be used sparingly, but wardens should not hesitate to use them in proper cases, eliminating all unnecessary words. They should not be used in ordering supplies, asking for increased expense allotment, except in emergencies, or, at government expense, in respect to annual or sick leave, or leave without pay.

When writing to the Bureau letters containing information which must be submitted to another warden for further investigation, you should furnish an original and two carbon copies of the letter. The original letter will be retained in the Bureau, one of the copies, with appropriate instructions, will be forwarded to the warden who is to make the further investigation, and the other copy with information as to the disposition of the matter will be returned to you.

No letter should embrace matter concerning more than one subject or case. Write a separate letter on each topic, making each communication full and complete in itself, or if the subject matter is so general in its nature that the letter must necessarily cover more than one case, a sufficient number of carbon copies of the letter should be furnished for filing with each case involved.

Attention is called to the following section of the Administrative Regulations of the U. S. Department of Agriculture:

"147. Names on Letterheads. No individual's name shall appear on the letterheads of any bureau."

The official title and office address may be printed on stationery, provided permission so to do is first obtained from the Bureau.

#### ATTENDANCE AT MEETINGS - Delivery of Lectures.

A warden may attend meetings occurring in the course of his official travel, when such attendance will be in the direct interest of his work, and he may deliver at such meetings lectures of instruction and disseminate information in regard to the work and the Federal game laws.

Travel must not be performed, however, for the sole purpose of attending meetings without first obtaining from the Bureau permission so to do.

A warden must not attend a session of a State legislature or appear before a legislative committee in the interest of legislation unless permission has been first obtained from the Bureau. Such authorization will be granted only when a member of a committee on game of a legislature (preferably the chairman) requests the Bureau to grant such permission.

#### LEAVE OF ABSENCE.

Sections 430 to 435 inclusive, of the Administrative Regulations, as amended, must be strictly followed.

It must be borne in mind that leave of absence is a privilege and not a legal right, and can be granted to a warden only when such leave can be taken without detriment to the service. A warden must anticipate taking annual leave at a time when his services will be least required in his district. This will often obviate the necessity of revoking leave of absence and ordering the warden to return to duty before its expiration.

A warden will not be permitted to take annual leave while in travel status, unless before the commencement of the trip on which he desires to take such leave, he shall have first requested such leave of the Bureau and received permission to take it. Application for such permission shall state the extent of the travel to be performed, the reasons therefor, the time when and place where the warden desires to take leave of absence, and the time when and place where he intends to return to duty.

Deputy wardens and temporary employees are not entitled to leave of absence.

#### EFFICIENCY RATING.

A warden will be rated upon efficiency and in fixing his rating the following matters will be considered:

- (1) General activity:
  - (a) Number of violations reported and the sufficiency of the evidence gathered upon which to base a prosecution.
  - (b) Expenses incurred.
  - (c) Completeness of reports.
  - (d) Knowledge of the law and of conditions.
  - (e) Cooperation with State officials.
- (2) Compliance with fiscal and administrative regulations and the rules of the Bureau.
- (3) Willingness to work.
- (4) Initiative.
- (5) Dispatch.

- (6) Accuracy.
- (7) Neatness.
- (8) Cheerfulness with which duties are performed.
- (9) Personal conduct.
- (10) The general observance of the law by the people in a warden's district, provided it is apparent that the warden was instrumental in bringing about a clean and healthful condition.

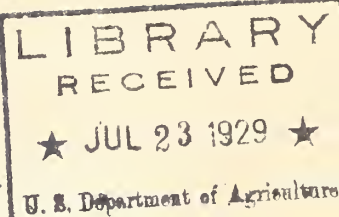
No attempt has been made to list these subjects in the order of their importance; suffice it to say that a warden's entire course of conduct and activity will be scrutinized and considered in determining his standard of efficiency.

A warden's efficiency rating will be considered not only in cases of promotion but should a warden's rating warrant so doing he may be demoted, reduced in pay, or dismissed when such action will promote the efficiency of the service. (Section 35, Administrative Regulations, and Rule XII of United States Civil Service Rules.)





UNITED STATES DEPARTMENT OF AGRICULTURE  
BUREAU OF BIOLOGICAL SURVEY



INSTRUCTIONS FOR THE GUIDANCE OF UNITED STATES GAME PROTECTORS  
AND UNITED STATES DEPUTY GAME WARDENS

1. This manual is intended as a guide for those whose work is connected with the enforcement of the Migratory-Bird Treaty Act of July 3, 1918 (40 Stat. 755, Criminal Code and Criminal Procedure, Title 16, Secs. 703-711), and of the provisions of the United States penal code commonly referred to as the Lacey Act (Criminal Code and Criminal Procedure, Title 18, U. S. Code), and is especially for the use of United States Game Protectors and United States Deputy Game Wardens in the field. In part it is explanatory of, but in no way supersedes or modifies, the Administrative and Fiscal Regulations of the Department.

2. Proficiency of Protectors.---Game Protectors can not become proficient without being thoroughly familiar with the Administrative and Fiscal Regulations of the Department, the practice and procedure in handling violations, and with the provisions of the Migratory-Bird Treaty, Act, and Regulations, and of the Lacey Act. In connection with illegal interstate shipments of birds and animals it is also important that Protectors become familiar with the provisions of the laws governing the export of birds and animals in the States within their respective districts. It is obviously impracticable to include in a manual of this character all legal provisions relating to the practice and procedure of the courts in the exercise of their criminal jurisdiction, but it is thought that the instructions contained herein will be helpful to all Protectors in the discharge of their duties.

To be a good officer a Protector must be not only courteous but courageous, although he should avoid any form of harshness or an overbearing attitude. His methods should be direct, orderly, and firm, without provoking resistance. While a Protector may exercise reasonable force, when necessary in effecting an arrest, he should be courteous and considerate to the fullest possible extent. There will be times when a Protector must act swiftly and forcibly, and if criticized for his act, his reputation for tact and courtesy will sustain him.

The efficiency of a Protector and his usefulness to the Biological Survey will depend in large measure upon his ability to command the respect and the confidence of those with whom he comes in contact. Discourtesy on the part of a Protector in his official capacity will not be tolerated.

Whenever a Protector is in doubt as to the law or methods of procedure he should write or wire at once to the Survey for information, stating the case fully and plainly. Cooperation and advice may also be had from United States attorneys, and in emergencies, United States customs officials also may often be able to render valuable aid.

3. Powers of Protectors under Lacey Act.--Game Protectors have no power to make arrests of offenders or to make seizures of skins or parts of the dead bodies of wild mammals in cases involving violations of the Lacey Act, nor should search warrants or warrants of arrest be obtained by Protectors under this Act. The Federal court or United States attorney directs the issuance of warrants to bring in offenders for trial after an information has been filed or an indictment had for violations. The evidence necessary to complete a Lacey-Act case comprises the express record of receipt and delivery of shipment, affidavit of express agent as to shipment or delivery, affidavit of consignee showing his receipt of shipment and other pertinent facts, and also canceled check issued in payment of shipment, together with original correspondence had with consignor, if available. If the investigation concerns the receiving "knowingly" of an illegal shipment by a consignee, the affidavit of the consignor or shipper or of a warden who examined the shipment in transit to establish its contents, together with the affidavit and delivery record of the common carrier, would be necessary. In a mismarking or failure properly to mark a shipment under the Lacey Act, in addition to the above evidence, the original wrapper or container of the shipment constitutes the best evidence, but the markings of a box or barrel may be carefully described in an affidavit by a witness. Any of or all these papers or evidence obtainable by a Protector noting an apparent violation of the Lacey Act, with the Protector's report, should be transmitted to the Survey for appropriate action.

4. Powers of Protectors under Treaty Act.--The powers of Game Protectors and those appointed to enforce the provisions of the Migratory-Bird Treaty Act are conferred by Section 5 of the Act,

United States Deputy Game Wardens possess the same police powers as Protectors, but they are not permitted to perform travel or to incur expenses chargeable to the Survey without prior specific authorization; and when so authorized they will be paid at a per diem rate for their services while actually employed and be reimbursed for travel expenses in accordance with the provisions of the Fiscal Regulations of the Department.

All migratory birds, including the plumage or parts thereof, nests, or eggs, taken, transported, or possessed contrary to the provisions of the Migratory-Bird Treaty Act may, in proper cases, be seized and held for use as evidence and for disposition by the court. Likewise all non-migratory birds, or parts, nests, or eggs thereof, taken, carried, or transported from one State to another contrary to State law, may be seized under Section 5 of the Migratory-Bird Treaty Act. Positive information as to the alleged illegal transportation of nonmigratory birds should be in possession of a Protector, however, before a seizure is actually effected.

Plumes of birds of paradise, goura pigeons, foreign species of herons, and other birds that do not occur in this country are not protected by the Treaty Act, and Protectors have no power to seize such plumage, unless it is transported interstate contrary to State laws, thus bringing it within the provisions of Section 4 of the Treaty Act. (Such foreign plumage, however, in possession for commercial purposes is subject to seizure by Customs authorities.)



Migratory birds or parts thereof, including the plumage, or their nests and eggs acquired by a person prior to July 3, 1918, the date when the Migratory-Bird Treaty Act became effective, and held in possession without a permit by a person for his own use and not for sale should not be seized.

Protectors are cautioned against making seizures unless the evidence at hand is sufficient to prove beyond reasonable doubt that the accused is in unlawful possession of the things seized. Illegal seizure not only will provoke serious criticism of the Survey but may lead to an action to recover damages against the Protector making it.

When a person commits a violation in view of a Protector, or the Protector has a warrant for the arrest of a person, he may, after he has made an arrest, search his prisoner and take from his person, and hold for the disposition of the court, any property connected with the offense charged, or that may be used as evidence against him, or any weapon that might enable the prisoner to commit an act of violence or effect his escape.

Game Protectors have no right to search an accused not under arrest or to take from a person not under arrest any articles for use as evidence without his consent. After an arrest has been made a Protector may seize, in addition to contraband birds, the gun, ammunition, hunting license, or other articles found on the person of the accused that may tend to establish his identity or guilt. The fact that the accused intends to plead guilty should not determine the course of a Protector in seizing for use as evidence game and implements used in committing the offense found on the person of the accused. The principal thing that a Protector must have in mind is to obtain sufficient substantial evidence to establish the identity and guilt of the accused in order that a conviction may be had. It must be borne in mind that an accused person intending to plead guilty may change his mind and plead "not guilty" at the trial.

5. Compromise of Cases.--Game Protectors must not settle or compromise any cases or offer immunity to any person accused of violating the law, and must not accept any sum in payment of fines or other settlement of the case or fix or accept bail in any case. Bail can be fixed and accepted only by one of the officials named in Section 1014 of the Revised Statutes of the United States (see Section 7, following), and accused persons can be fined or imprisoned for an offense only after conviction by Federal court or Federal judge, or in default of bond by a commissioner or other officer.

6. Duties.--Game Protectors are appointed for the specific purpose of enforcing the provisions of the Migratory-Bird Treaty Act and Sections 241-244 of the United States Penal Code (Secs. 391-394, Criminal Code and Criminal Procedure, Title 18, U. S. Code), commonly referred to as the Lacey Act, and the authority so conferred may be exercised in any part of the United States, subject only to such limitations as may be prescribed by the Survey.

Deputy Wardens holding positions as State Wardens may render incidental services in the enforcement of State game laws during the time they

are on active duty for the Survey, but all cases of violations of the Federal laws that come to their notice during the time they are performing such service must be reported to the Survey for disposition.

All full-time Protectors, and Deputy Game Wardens while assigned to active duty, shall devote their entire time to the Federal service, but under certain limitations they may be engaged on other work provided it does not impair their efficiency, and so long as the work to be performed in a private capacity can not be construed by the public to be official acts of the Department. (See Sec. 661, Administrative Regulations.)

Except as directed in his letter of authorization, no Protector shall perform travel at government expense, unless specially authorized by the Survey.

A Protector will be assigned to a definite district in his letter of authorization, and will confine his operations to that district unless specifically assigned to duties outside his district, but he may travel in territory contiguous to his district when violations are being committed or if the pursuit of a violator requires him to enter such contiguous territory.

When a Protector operates in a district assigned to another, either on special instructions or as a necessary incident to the conduct of his work, a copy of any letter or report to the Survey on investigations made or affecting persons apprehended violating the law should be furnished for the information of the Protector in whose district he has been operating.

It is the duty of a Protector to familiarize himself with migratory-bird conditions in his district, especially in those sections where the law is most frequently violated. Important hunting sections should be visited as frequently as the Protector's allotment for travel expenses will permit and when good reasons exist for his believing that conditions require his presence.

A Protector must not only do patrol duty in the ordinary sense of the word, but he must endeavor to anticipate the movements of those who would violate the law. He must be alert, study the methods of violators, cultivate the friendship of law-abiding persons, and open channels for information concerning those things of which he ought to get early knowledge.

7. Procedure.--Section 1014 of the Revised Statutes of the United States provides:

"For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be for trial before such court of the United States as by law has cognizance of



the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizance of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

This section relates to natural persons and does not apply to corporations, which will be proceeded against as hereinafter mentioned.

While there are numerous officers given authority by Section 1014 to hold preliminary hearings, it is preferable for a Protector to take an arrested offender before the nearest United States commissioner for hearing, or to apply to the United States commissioner for search warrants, warrants of arrest, or other process needed in the enforcement of the Federal game laws.

Officials named in said Section 1014 customarily follow the practice in State courts. Protectors, therefore, must familiarize themselves with State laws on the subject of issuing and serving warrants, and in all cases where warrants are issued by State or municipal officials they must be guided by the provisions of State laws relating to the serving of such writs.

8. Corporations.---Corporations can not be prosecuted in the same manner as are individuals. In a case against a corporation, a Protector will prepare separate affidavits for each witness, have them signed and executed before an officer authorized to administer oaths, and transmit the affidavits to the Survey with a report of the case. In cases involving firms, copartnerships, or corporations, special care should be taken to ascertain the full names and addresses of all the partners of a firm or copartnership, the full, correct name of a corporation, the State under whose laws it is incorporated, date of incorporation, its principal place of business, and the full names and addresses of the principal officers.

9. Confessions.---A confession not made in open court can not be relied upon to obtain a conviction unless it is supported by other evidence tending to show that the particular offense was committed. A confession is a voluntary declaration of a person that he has committed an offense and, to be admissible as evidence against the accused, it must be clearly shown that it was free and voluntary. As defendants frequently deny their confessions when confronted by them in court, it is important that Protectors procure, in addition to the confession, affidavits from persons who have some personal knowledge of the commission of the offense. No difficulty arises if the person making the confession can be taken immediately before the court and there pleads guilty. In such cases, the Protector should consult the United States attorney who, no doubt, will be willing to expedite the prosecution. It is proper for a Protector to interview or write to an alleged violator for the purpose of obtaining any statement he may care to make concerning the alleged violation. In writing to such person the Protector should be careful not to use any sarcastic language or threats. The latter should be prepared in such manner as to be least calculated to give offense.



10. Prosecution after Conviction in State Court.--An act committed in violation of both Federal and State laws can be prosecuted in either Federal or State court, or in both, but the Federal courts are loath to impose a second punishment when adequate punishment has already been meted out in State court. Only in exceptional cases, where the enormity of the offense justifies, will the Survey recommend prosecution in Federal court if the case already has been handled in a State tribunal. In forwarding to the Survey cases in which the accused has already been prosecuted in the State court, the Protector should furnish good and sufficient reasons why Federal prosecution should be instituted.

11. Cooperation with State Authorities.--Cooperation on the part of the public, and particularly on the part of State and municipal officials, is highly desirable and will serve to assist in bringing about a proper and effective enforcement of the Migratory-Bird Treaty Act. These officials in the various branches of State and municipal governments are all in position to render invaluable assistance. A Game Protector should earn the confidence and respect of all such officers and of the public, to the end that their cooperation may be ready and voluntary.

Evidence of violations committed contrary to both Federal and State laws should first be transmitted to the Survey for consideration, but evidence of offenses committed in violation of State laws only, except those offenses relating to the illegal interstate shipment of the dead bodies of game animals or parts thereof and the skins of fur-bearing animals, should be forwarded promptly to the proper State authority for action. All reports affecting the shipment of the dead bodies of game animals or skins of fur-bearing animals should first be submitted to the Survey. This material is carded and then forwarded from the Washington office direct to the States interested.

Protectors should make every effort consistent with the discharge of their duties in the enforcement of the Federal law to obtain evidence of State violations, and in addition to transmitting the evidence to the proper State authority, except in cases of interstate shipments of game and fur-animals as above noted, should report to the Survey all such cases, including final disposition in State court. These reports are essential to enable the Survey to keep a complete record of total cooperation extended the several States in the enforcement of their game laws.

12. Affidavits.--Affidavits respecting violations must be carefully prepared and should contain a clear and concise statement of the facts constituting the offense within the personal knowledge of the affiant. They must show the place where, and the exact date when, the violation occurred. An affidavit indicating that an offense occurred "on or about" a certain date is not sufficient. Hearsay evidence, irrelevant matter, and facts that may be used by way of defense should be omitted from the affidavit but, for the information of the Survey, they should be stated in a report or letter, in duplicate, accompanying the affidavit.

Under a general ruling of the Federal Court of Appeals for the Eighth Circuit, affidavits for use in Arkansas, Colorado, Iowa, Kansas, Minnesota,

Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming must describe with particularity and certainty the exact place where an offense was committed.

A separate affidavit should be furnished for each individual violator, even where two or more persons are apprehended at the same time. Ordinarily duplicates of the originals properly sworn to will be acceptable.

When practicable, witness affidavits should be sworn to before a United States Game Protector who has been authorized by the Secretary of Agriculture under the provisions of the Act of Congress of January 31, 1925 (43 Stat. 803), to administer oaths (the Department seal will be affixed to such affidavits when received in the Survey); otherwise, before a clerk or deputy clerk of a United States court or a United States commissioner, who shall be paid no fee for administering the oath, as they are paid their fees on accounts rendered through the Department of Justice.

If such an officer is not available, and it is necessary that an affidavit be sworn to before a notary public or justice of the peace having a seal, care should be exercised that such seal is properly affixed to the affidavit; if such officer has no seal, it will be necessary to have affixed to the affidavit the county clerk's certificate of authentication. A Protector may claim reimbursement in his account for fees thus paid to a notary, a justice of the peace, or a county clerk. When expense is involved in obtaining an affidavit, it will be necessary to submit an explanation before the item can be passed for payment.

13. Searches and Seizures.--As a general rule Protectors are without authority to conduct a search for contraband migratory birds unless armed with a search warrant. Birds found in cold storage during the close season may be seized and held for use as evidence, if the Protector has gained entrance into the plant through permission of the owner or superintendent in charge and violations of the Migratory-Bird Treaty Act are discovered. When a Protector is in possession of sufficient evidence indicating that birds are illegally possessed and it becomes necessary to have a search warrant before the evidence can be obtained, application for such a warrant should be made to the United States commissioner or Federal judge. The application for a search warrant should describe with particularity the specific establishment, room, building, dwelling, etc., that it is desired to search. No attempt should be made to obtain a search warrant for a dwelling, except on the strongest possible evidence indicating a substantial violation. It is necessary, of course, to submit substantial evidence to justify the issuance of a search warrant for any building or place of business, but the evidence on which to search a dwelling should be a practical certainty.

After a search warrant is obtained, it must be served by the officer mentioned in the warrant and be read to the owner or occupant of the premises to be searched. When a search warrant is directed to a Protector he will conduct the search in a thorough and courteous manner, with a demand in the name of the law to permit the search authorized, but must confine his operations to the particular room, part of the establishment, etc., set forth in the search warrant. The premises should be left in the same condition as



that in which they were found. Any migratory birds, or parts thereof, evidencing a violation discovered during the search, should be immediately seized, the officer leaving a receipt for the property taken. The evidence obtained should be carefully marked and preserved for use in any further proceedings in the matter. At the completion of the search the warrant should be returned to the United States commissioner with notation thereon as to the action taken. A detailed report of action taken under a search warrant should be furnished the Biological Survey.

14. Arrests in General.--A Protector should sufficiently familiarize himself with the practice and procedure in criminal cases to avoid exceeding his authority. If a Protector who acts within the scope of his employment and within his authority is sued on that account, the Department of Justice will be requested to assist in his defense; but, if a Protector knowingly exceeds his authority and gets into difficulties, he must personally arrange for his defense.

No hard and fast rule as to when an arrest should be made can be stated; an employee must exercise his judgment. Usually no arrest should be made in trifling or technical cases; but in dealing with such cases great care must be used to avoid the appearance of partiality, and reports of these cases should be forwarded promptly to the Survey. No consideration of prominence or influence, when the offending party is of the age of mature judgment, should cause a Protector to deviate from his duty of holding violators responsible for their illegal acts.

A Protector may make an arrest when armed with a warrant issued by a Federal court, a United States commissioner, or other officer of competent jurisdiction (see Sec. 1014, R.S., section 7, above), or without a warrant when the offense is committed in the Protector's presence or view, in which event the arrest must be made immediately. An arrest without a warrant must not be made unless the violation is committed in the presence or view of the Protector. The details of procedure in making an arrest with warrant and in handling the case after making an arrest without warrant are hereinafter stated separately.

An arrest on a warrant must be made for the purpose stated therein and, if the accused so demands, the warrant must be read to him as soon as the Protector can do so without danger to himself or of the escape of the accused. When the arrest is made for an offense committed within the view of a Protector, he should inform the accused of his identity and of the reason for making the arrest, and furnish the offender with evidence of his identity and authority, i.e., badge or identification card, if requested under the same conditions as reading of warrant.

When an arrest is made with a warrant, under no circumstances may the accused be released but he must be arraigned before the official who issued the process.

It may be unnecessary at the time the offense is committed to make an arrest when the Protector knows the accused, or has at the time so established the identity of the latter that he can be located thereafter and



arrested on a warrant. The main thing is to take proper steps to prevent the escape of the accused.

When an immediate arrest is not made no warrant of arrest should be obtained, in usual cases, but the Protector should promptly furnish the Survey with his report of the violation, his affidavit of facts, and the affidavits of other material witnesses. This evidence is then transmitted through proper channels to the United States attorney for the District in which the offense was committed, and forms the basis for the filing of an information.

In case the accused is known to, or his identity has been fully established by the Protector, it is good practice, as a rule, to make no arrest if the accused will agree to appear voluntarily before a United States commissioner at a specified time and will permit the Protector to take and hold for use as evidence, his gun, ammunition, State hunting license, game, or other article or paraphernalia connected with the violation. Even the appearance of an accused before a commissioner should be required only if circumstances justify, as the accused can be proceeded against by information, as outlined in the preceding paragraph. In such cases the Protector should obtain, if possible, a written confession if the accused is willing voluntarily to make a confession, and, in any event, should obtain a written statement in which the accused agrees, if it shall be deemed necessary, to appear before a commissioner and consents to the Protector holding the articles connected with the violation for use as evidence. If the accused refuses to give such consent and there is danger that he may escape and the articles mentioned are necessary for use as evidence against him, the Protector should make an immediate arrest and take him before a commissioner, in which event the Protector, of course, would seize such of the above enumerated articles found on or used by the accused as may be needed for evidence and hold them for use at the trial.

It is left to the discretion of a Protector as to when an arrest should be made, as it is often more advantageous not to make an arrest for a violation committed in his presence or view, for when an arrest is made and the accused is taken before a United States commissioner or other magistrate, the Protector necessarily must leave the field of activity. If the section wherein the violation is noted is a trouble zone, or if a number of violations are occurring simultaneously, such action immediately advertises his presence in the vicinity, and his chances of continuing his investigations under cover or of returning and apprehending the remaining violators in the area are extremely remote. In some sections it may be expedient to make an arrest, even though an accused has been sufficiently identified to be thereafter apprehended on a warrant, if the violation occurs in a trouble zone or the accused is an habitual game law violator and if an arrest under such conditions would have a salutary effect through the publicity gained by the arraignment. In instances of this nature the Protector's conduct must be governed by the conditions he encounters in the field.

It is not proper to release a person under arrest after making a seizure, and it is always advisable when an arrest is made to take the accused immediately before the commissioner for proper action. If an arrest

has been made and good reasons develop for releasing the prisoner, the Protector should endeavor to have the offender make a written statement or sign a regular form showing the nature of the offense for which he has been apprehended, releasing any game seized to a charitable institution, etc., and consenting to the Protector's retaining his gun, ammunition, State hunting license, game, or other evidence connected with the violation, with the understanding that he will meet the Protector in court or before a United States commissioner when notified to appear. The Protector must caution the prisoner that his statement may be used against him in any trial that may result.

In other words, when it is planned not to arraign an accused, the Protector should indicate to him that such determination is an accommodation to him, as, if he is taken a considerable distance to the office of a United States commissioner and held for the action of the Federal Court, he would probably be put to the trouble and expense of furnishing bond, or possibly have to remain over night in jail in the event bond could not be immediately obtained, and have the added expense of paying his transportation expenses back home.

When no arrest is made or it is impracticable or unnecessary to take an accused before the commissioner, he will be proceeded against by information prepared by the Solicitor of the Department upon receipt of the Protector's report and affidavit of facts.

15. Procedure in Arrests without Warrant.--The usual mode of procedure is here given, though the practice may vary somewhat in different States, making it necessary for a Protector to familiarize himself with the State laws governing court procedure in his district:

When a violation is committed in the presence or view of a Protector he should immediately arrest the offender and take him before the nearest United States commissioner, or other magistrate or official mentioned in Section 1014 of the United States Revised Statutes, unless the violator is well known to the Protector and satisfactory arrangements can be made for him to appear before a commissioner or magistrate at a more convenient time in the near future, if such appearance is deemed necessary by the Protector; such an arrangement should be made only when the Protector is satisfied that the offender will so appear, or, in case of his failure to do so, that he can be easily located and arrested thereafter on a warrant.

Whether the accused is arrested with or without warrant, or his offense is merely noted by the Protector, a report of the case together with affidavits of the Protector and witnesses, if any, should be forwarded promptly to the Biological Survey.

When the offender under arrest without warrant is brought before the commissioner or other magistrate, a complaint should be prepared, sworn to before, and filed with, the official, who will immediately inform the accused of the charge against him and of his right to the aid of counsel at every stage of the proceeding, and before any proceedings are had. If he



does not desire counsel, the accused must plead to the charge either "guilty" or "not guilty." He may waive or demand an examination. Each step in the proceeding will be recorded in his docket by the commissioner or magistrate.

In case of a plea of "guilty," or if examination is waived, the commissioner or magistrate will commit the accused, fix bail immediately, and require him to give bond for his appearance at the next term of the United States court in the district in which the offense was committed. If an examination is demanded, the hearing may be at once, or an adjournment had to a convenient date. In case of an adjournment the accused should be committed, bail fixed by the commissioner or magistrate, and bond required for appearance at the examination. If the bond is not given, the Protector should take the accused to the county or city jail designated in the warrant of commitment there to be confined until the hearing is held, or to await the action of the next term of the United States court having jurisdiction of the case.

In all cases a certified copy of the warrant of commitment must be delivered to the sheriff or jailer as his authority to hold the prisoner, and the original warrant must be returned to the proper court or officer, with the Protector's "return" thereon.

The Protector and the witnesses must be present at the hearing to testify to the facts tending to show that the accused is guilty of the charge made against him.

The commissioner or magistrate, in an examination of an offender, to be authorized to commit need not be convinced beyond a reasonable doubt of his guilt, but the proof should be such as to afford probable cause to believe that the offense was committed, and by the accused. If the evidence shows the existence of probable cause for believing the accused to be guilty, the commissioner or magistrate should commit him for the action of the United States court in the district where the offense was committed, fix bail, and require bond for appearance in such court. In default of bail being given, the accused should be confined in the jail designated in the warrant of commitment.

In all cases of arrest without warrant, the Protector should promptly report the facts to the Survey accompanied by affidavits of himself and any witnesses.

16. Procedure in Arrests with Warrant.--When an offense is not committed in his presence or within his view, the Protector should ascertain the material facts and report the case promptly to the Survey with affidavits of the witnesses. If the evidence thus submitted tends to establish that a crime has been committed, it will be transmitted to the Department of Justice for appropriate action.

An emergency may arise requiring the prompt issuance of a warrant in order to prevent the escape of an accused person, and in such cases a Pro-



tector should apply to one of the officials named in Section 1014 of the United States Revised Statutes, preferably the nearest United States commissioner, for a warrant commanding an arrest.

To obtain a warrant it is necessary to comply with certain conditions in order to give the commissioner or magistrate jurisdiction. A complaint must be prepared showing the fact that a crime has been committed, and that the accused committed it; the complaint must be made by a person cognizant of the facts, sworn to before and filed with the commissioner or magistrate.

The complaint should be carefully drawn, showing in the most direct language possible who is alleged to have committed the violation, the time when and the place where the alleged violation was committed, and what acts constituted the offense; and that the acts stated were contrary to the Migratory-Bird Treaty Act of July 3, 1918.

If these papers are in proper form and the charges contained in the complaint tend to establish that a crime has been committed, and that the person named is guilty of the offense, the commissioner or other magistrate should issue the necessary warrant for the arrest of the accused person, as specifically authorized in Section 5 of the Migratory-Bird Treaty Act, or as provided in Section 1014 of the Revised Statutes.

The warrant for the arrest of the accused may be executed by any Protector or United States Deputy Game Warden to whom it may be directed, or it may be directed to a United States marshal or his deputy. The execution of the warrant consists of taking into custody the person named therein. The Protector should make his return, which consists of the production of the accused before the commissioner or magistrate, together with the warrant endorsed on the back thereof to show execution.

Before a Protector serves any warrant or other court process he should carefully scrutinize the document for any defects or omissions; if he executes a defective process he may become personally liable.

17. Expenses for Executing Process.--When a warrant of arrest or a search warrant issued by a court or officer of competent jurisdiction in connection with violations of the Migratory-Bird Treaty Act is executed by a United States Game Protector or one of his deputies, the expenses of the Protector and of any prisoner prior to his commitment are a charge against the appropriation "General Expenses Bureau of Biological Survey - Protection of Migratory Birds."

When such a warrant is executed by a marshal of the United States or one of his deputies, and the marshal is accompanied by a Protector, the expenses of the marshal and any prisoner are a charge against the appropriation for the Department of Justice, and the expenses of the Protector are a charge against the appropriation for the protection of migratory birds.

The expenses incurred in executing a warrant of commitment, whether by a marshal or a Protector, are chargeable against the appropriation for

the Department of Justice. In case a warrant of commitment is executed by a Protector, his expense account should be rendered to the marshal for approval and placing in the way of payment.

When a warrant is executed by a marshal, the Protector must not pay any part of the expense of the marshal and prisoner and claim reimbursement therefor from the Biological Survey or the Department of Agriculture.

18. Memoranda of Observations.--All Game Protectors, and all Federal Deputy Wardens when assigned to active duty, must keep diaries containing detailed records of their itineraries and of their activities. Immediately after making an arrest, while the circumstances are fresh in mind, full and complete notes must be entered in the diary of observations of the actions of the accused, and any contraband birds, guns, or other articles seized marked for identification as evidence. The notes must contain the following data:

(1) Full name and address of the accused; (2) date and time of day when, and place where, the violation was committed; (3) particular acts, which can be proved, constituting the violation; (4) number and kinds of birds, or hunting equipment seized; (5) statements made by accused when arrested; (6) names and addresses of persons present at time the violation was committed or when any statement was made by accused; (7) any other facts observed in connection with the case.

In cases of illegal killing of birds, reference should be made to the distance between the Protector or Deputy Warden and the accused at the time of the commission of the deed; and, if it occurred at night between sunset and half an hour before sunrise, the exact time of its commission should be given as shown by the watch of the Protector or Deputy, the correctness of which should be verified, if possible. In brief, all facts and circumstances having a direct bearing on the case should be recorded to be later used in refreshing the memory of the officer when in court to give his testimony. Such memoranda may be used to refresh the memory of a witness only when it was made at the time when the event occurred or immediately thereafter. In order that there may be no question, when a Protector or Deputy Warden in testifying wishes to refer to his original notes, as to the time when data in connection with an alleged offense were recorded, he should note at the end of his memorandum statement "These data recorded this \_\_\_\_\_ day of \_\_\_\_\_" and sign or initial it.

It should never be assumed that an accused person will plead guilty and that it is unnecessary to take proper precautions to preserve the evidence of guilt. Proceed in each case as if it is to be contested, and leave nothing undone that should be attended to in order to establish the guilt of the accused.

19. Preservation of Exhibits.--Migratory birds possessed contrary to law must be seized immediately by a Game Protector and preserved, if possible, in their original condition for future use as evidence. Birds so seized must be marked or tagged forthwith for identification by the Protector making the seizure, with the following information:



(1) Date of seizure; (2) place of seizure; (3) name and address of person from whom seized; (4) species seized; (5) quantity seized; (6) reason for seizure; (7) witnesses present when seizure was made.

When seized dead birds are to be preserved for future use as evidence, they should, promptly after being appropriately tagged, be placed in a convenient cold storage in the name of the United States Department of Agriculture, Bureau of Biological Survey; plumage should be placed in a package and sealed in such manner that at any time the Protector can swear that the contents of such package are the identical contents that he placed therein, after which it must be safely retained or stored. Whenever possible a Protector should obtain a written agreement from the person from whom birds, plumage, or specimens were seized authorizing them to be turned over to the Biological Survey for disposition for scientific, educational, or food purposes. A duplicate receipt embodying the agreement and specifying the number and species of birds or plumage should be executed by the Protector and the violator, each of whom should retain a copy. If such a release is given, game birds should be given to a hospital, asylum, charitable institution, or institution maintained for the care of the poor, for use as food by the inmates; migratory insectivorous or nongame birds or their plumage should be given to educational or scientific institutions. The Protector should take a receipt from the superintendent, or person in charge of the institution, to whom birds or plumage may be given, showing the number and species of birds or plumage thus donated and transmit such receipt to the Survey. In no case should such seized articles be given to individuals or public officials for personal use.

Where a violator refuses to enter into an agreement authorizing birds to be disposed of for food purposes, and it is impossible to preserve them for use as evidence, the Protector should retain the heads, wings, and feet of the birds for use as evidence and dispose of the carcasses by gift as stated in the preceding paragraph.

In cases involving seizure of a small number of birds, especially the smaller species, when no agreement to dispose of them is obtained from the violator, they may be preserved by cutting open the abdomen and placing them in an ordinary fruit jar filled with a 10 per cent solution of formalin. Birds thus preserved should be properly tagged for identification before being placed in the preservative. Eternal or water-proof ink should be used in marking tags. After remaining in the jar about a week they can be taken out and the carcasses dried, after which they will practically mummify and keep indefinitely.

Protectors should also obtain, whenever possible, a release to the Survey of any live birds that may be seized. Such birds must be retained alive in a suitable place for disposition by the court, unless other instructions are received from the Survey directing that they be disposed of by liberation or otherwise.

In cases involving the killing of migratory game birds in excess of the daily bag limit, or shipment in excess of the number authorized by the



Federal regulations, all the birds killed or shipped should be seized and handled in accordance with these instructions.

Unless seized migratory birds or plumage are disposed of pursuant to the foregoing instructions they should be held for use as evidence by the Protector seizing them, and for disposition by the court, and should not be forwarded to the Survey, except in those doubtful cases when it is necessary to have the specimens or plumes identified.

When convictions are obtained, or a case is finally disposed of in Federal court, unless otherwise directed by the court or the United States attorney, all birds fit for human food should be promptly donated to a public charitable institution or public hospital. If unfit for food and of no scientific value, they should be destroyed. The Survey should be informed of the final disposition of seizures.

Guns, ammunition, and other paraphernalia used in the illegal procurement of migratory birds and seized for use as evidence should be forwarded to the headquarters of the Protector in the district where the seizure is made, to be held there pending disposition of the case. Such articles should be properly marked, tagged, and placed where they will not deteriorate or be lost or stolen, so that they will be available at the trial and can be returned to the accused when the case has been terminated.

If for any reason an exhibit is to be placed outside the control or possession of the Protector, he must attach an indestructible marker thereon, so that when it is returned to him he will be able to identify it as the one he had previously in his possession.

20. Birds in Storage.---It is desired to keep down to a minimum the expenses incident to stored birds. The Survey can not be held accountable for unpaid storage charges on seized migratory birds. Only such storage charges as accrue on and after the date birds are seized can be paid by the Survey. Accounts covering storage charges should not be allowed to extend from one fiscal year to another, but all accounts should be rendered promptly at the close of the fiscal year for charges accruing during that period.

21. Purchase of Birds or Plumage as Evidence.---It is unnecessary, except possibly in rare cases, to purchase birds, plumage, or other specimens for use as evidence, because of the fact that it is unlawful to offer for sale, or to sell, migratory birds or parts thereof. The law authorizes the immediate seizure of birds or parts thereof that have been offered for sale. Protectors, therefore, must not, except in rare cases, purchase birds or parts thereof to establish violations, but should immediately seize and hold for use as evidence all such birds or plumage they find offered for sale. Birds and plumage so seized may be disposed of to institutions in the same manner as outlined in the second paragraph of Section 19, on "Preservation of Exhibits."

In some districts Federal judges and United States attorneys hold it to be improper for a Federal officer to purchase, or cause to be purchased,

birds from a person in order to get evidence of sale against him, even though evidence of a sale violation can be obtained in no other way, holding such cases to be "induced violations." In other jurisdictions the judges and United States attorneys hold a contrary opinion. Game Protectors should, therefore, become familiar with the attitude of the Federal judge and United States attorney in their respective districts on this question.

22. Indian Reservations.--Hunting and fishing rights of Indians on their reservations as a rule have been reserved to them by treaty, and offenses against either Federal or State game and fish laws committed by Indians on their reservations are generally left to the action of the tribal authorities. Should offenses against the Migratory-Bird Treaty Act become serious, the matter should be taken up with the superintendent in charge. (Appropriate action may be taken in particular cases through the Department of the Interior for the enactment of tribal laws conforming to the Federal regulations.) A full report of the matter should be immediately furnished the Survey. While there seems to be no doubt that the Migratory-Bird Treaty, Act, and Regulations apply to Indians on their reservations, the Survey feels that no arrests of Indians on reservations should be made under present conditions, but that such matters should be handled as indicated above.

Persons other than Indians, however, may be arrested on the reservations for violating the Migratory-Bird Treaty Act, and the permission or sanction of superintendents is not necessary to authorize such arrests. Protectors should call upon the superintendents in charge of Indian reservations located in their districts, establish cordial relations with them, and acquaint themselves with the tribal regulations affecting migratory birds in the Indian country.

23. Examination of Express Records.--Game Protectors should experience little difficulty in making examination of express records, as the vice-president of the American Railway Express Company under date of September 30, 1920, advised the operating vice-presidents that the general rules and instructions of the company authorized agents to furnish officers and agents of the Federal government information regarding transportation of property in interstate commerce.

Protectors should be careful not to antagonize agents in the event that their authority is questioned. If an agent of the express company unreasonably refuses to give a Protector an opportunity to examine express records or to give assistance to determine whether game or fur in possession of the company is being illegally shipped in interstate commerce, the Protector should promptly report the facts to the Biological Survey.

The practice of the local agents of the express company is to forward within three days to the district auditing office billings covering outgoing shipments, and in a general examination of express records in a given region it is necessary to visit the main office for the division from which the shipment was made to conduct such work. As several States



are usually included in each division, it is necessary in most instances to have the Protectors in the field report on points from which they desire records examined and the Survey can arrange with the Protector in the district in which the headquarters of the division office is located to make a general inspection once or twice a year or as occasion demands and obtain affidavits of express officials and copies of waybills covering shipments under investigation.

24. Parcel-Post Shipments.---Section 465 of the Postal Laws and Regulations, relating to the shipment of dead bodies or parts thereof of wild animals or birds, is as follows:

"Sec. 465. Postmasters shall not accept for mailing any parcel containing the dead bodies, or parts thereof, of any wild animals or birds which have been killed or are offered for shipment in violation of the laws of the State, Territory, or District in which the same were killed or offered for shipment. Provided, however, That the foregoing shall not be construed to prevent the acceptance for mailing of any dead animals or birds killed during the season when the same may be lawfully captured, and the export of which is not prohibited by the law in the State, Territory, or District in which the same are captured or killed.

"2. Parcels containing the dead bodies of any game animals, or parts thereof, including furs, skins, skulls, or meat, or of any GAME OR WILD BIRDS, or parts thereof, including skins or plumage, may be admitted to the mails ONLY WHEN PLAINLY MARKED ON THE OUTSIDE to show the actual nature of the contents and the NAME AND ADDRESS OF THE SENDER OR SHIPPER: Provided, however, THAT FRESH GAME IN ANY FORM may be accepted for transmission only to post offices to which, in the ordinary course of mail, it can be sent without spoiling. (see Sec. 463)"

25. Construction of Game Laws Governing the Transportation and Importation of Wild Birds--Native and Foreign.---Section 2 of the Migratory-Bird Treaty Act prohibits the shipment, transportation, etc., of any migratory bird or part thereof, including the plumage, except as specifically permitted by regulations adopted by the Secretary of Agriculture.

Section 4 of the Act prohibits the interstate shipment, transportation, etc., by any means of any bird (migratory or non-migratory) or part thereof contrary to the laws of the State in which it was captured, killed or taken, or from which it was shipped, transported, or carried, and the importation of any bird, etc., captured, killed, transported, etc., contrary to the laws of any Province of Canada. This Section supersedes the provisions of Section 242 of the Penal Code with respect to the interstate shipment and importation from Canada of wild birds killed or shipped in violation of the laws of the State or Province of Canada in which they were killed or from which they were shipped, and adds new features covering the shipment by any means whatever and the shipment of live birds as well as the dead bodies.

A violation of Section 4 is predicated on a violation of a State law or law of a Province of Canada. In other words, there can be no violation



of Section 4 unless the acts committed were in violation of the law of the State or Province in which the birds were taken or from which they were shipped or transported.

The provisions of Section 2 must not be confused with the provisions of Section 4. Section 2 relates solely to migratory birds, and a violation of this section is not predicated on a violation of State law.

With respect to the interstate shipment of wild birds there remain of the Lacey Act only the following provisions:

(1) That part of Section 242 relating to the delivery to a common carrier for transportation, etc., of foreign animals or birds, the importation of which is prohibited by Section 241 of the Penal Code. Violations of this provision are not predicated on a violation of the law of any State or any Province of Canada, but comprise foreign animals or birds illegally imported into this country.

(2) The provisions of Section 243 relating to the marking of packages in which non-migratory birds or parts thereof are contained. In this connection it may be said that a violation of Section 243 is not predicated on a violation of State law, and in the administration of the Lacey Act the Survey has held that this section applies to the marking of packages containing dead bodies, plumage, or parts of all wild birds, native or foreign. Shipments by parcel post from one State or country to another are shipments in "interstate or foreign commerce" under Section 243, but the parcel-post system is not a "common carrier" under Section 242. Marking packages containing migratory birds or parts thereof is now covered by Section 2 of the Migratory-Bird Treaty Act and the regulations.

(3) The provisions of Section 244, making it unlawful for the consignee knowingly to receive, or for a common carrier knowingly to carry or transport, articles shipped or transported in violation of Sections 241, 242, and 243 of the Penal Code.

The provisions of the Tariff Act prohibit the importation of the plumage and skins of wild birds or parts thereof, including numidi, and the plumage of goura pigeons and birds of paradise. This law is enforced by officials of the Customs Service and has no relation to the provisions of Section 241 of the Penal Code relating to the importation of live birds.

It, therefore, is apparent that in the absence of specific provisions of State law, clearly indicating that the plumage of goura pigeons, birds of paradise, and other birds of foreign species are included therein, the provisions of the Lacey Act and of Section 4 of the Treaty Act do not apply thereto, except the provisions of Section 243, which require that all packages containing the dead bodies or plumage or parts thereof of all wild birds when shipped in interstate or foreign commerce shall be plainly and clearly marked as provided by said section.

26. Fur Invoices.--Shortly after the close of the open seasons on fur animals, Protectors should visit the large raw-fur receiving houses in

their districts with a view to examining their records of fur receipts to discover illegal shipments of skins of beavers and other protected fur bearers. As there is no provision in the Lacey Act compelling fur houses to open their records for inspection, a Protector in order to gain access to such records must be very tactful in his dealings with the concerns. Many dealers, however, will exhibit their records. A fur dealer who seems disinclined to extend the courtesy should be advised that all information is treated as strictly confidential and that his cooperation will aid the Federal Government and the States in efforts to conserve the supply of fur-animals, resulting in a better grade of furs reaching the market and at the same time will keep the dealer from being placed in a position of shielding law violators of this character. Such information as appears to cover illegal shipments should be copied on Form Bi-968 and submitted to the Survey, where it will be carded and then forwarded to each interested State or to other Protectors for investigation.

27. Cold-Storage Cases.---In connection with the possession of migratory waterfowl in cold storage during the Federal close season, proof should be furnished the Survey that the seized birds had been placed in storage by the person whose name is given on the package or that they were put in storage by another acting under his authority. An affidavit to this effect should be obtained, if possible, from the manager of the storage plant or other person in charge having personal knowledge of the fact. In addition the Protector should interview the accused, if convenient, in an effort to procure a signed release for such birds, or an admission of ownership, which, if verbal, should be included in the Protector's affidavit. If it is not possible personally to interview the accused, the matter of procuring a release should be taken up with him by correspondence.

28. Spite Cases.---Where the sole evidence in connection with an offense consists of an affidavit by an individual, unsupported by affidavit of a Federal Game Protector, Federal Deputy Warden, or State Warden, it will be necessary for the Protector or Deputy to furnish a statement indicating that the violation was actually committed by the accused and that the affidavit was not furnished as a result of spite work or personal enmity. A Protector should endeavor to obtain sufficient evidence to substantiate the facts related in the witness affidavit and should in all cases interview the accused or else write him for his version of the matter and then submit to the Survey any communication or affidavit received as a part of the evidence in the case.

29. Youthful Violators.---It is not the practice of the Survey to report for prosecution cases wherein the offenders are less than 18 years of age, unless the offenses committed are of a very serious nature and repeated efforts of Federal or State officers to have parents control the actions of their children have proved fruitless. The age of all offenders should be given on Form Bi-300.

30. Handling Cases Direct.---The Survey has no objection to Protectors' furnishing United States attorneys with witness affidavits covering offenses wherein an accused has expressed a willingness to enter a plea of guilty and when court is in session or about to convene, provided such pro-



cedure has the approval of the prosecuting attorney. In all cases of this character, however, on the filing of the evidence with the United States attorney the Survey must be immediately advised and furnished with a copy of the witness affidavits so that the Survey in turn may submit it to the Solicitor of the Department, who will promptly take the matter up with the Department of Justice.

31. Interest in Cases.--A Game Protector's interest in a particular case should not lapse after submission of evidence to the Survey and the case has been forwarded for prosecution. Cases have been known to lie dormant for long periods. When a Protector is at a point where Federal court meets and in a district where cases obtained by him are known to be pending, he should call at the clerk's office and ascertain their status, and take up with the United States attorney or his assistant the matter of pending cases to ascertain whether arrangements can be made for their early disposition.

In this connection a Protector should remember that the prosecuting attorney is busily engaged with various kinds of prosecutions and therefore should be tactful in his dealing with this official. He should not offer any criticism of the manner in which cases are handled but answer all questions and in a general way give any information the attorney may desire. Protectors are not authorized to agree to the dismissal of cases but the United States attorney should make his recommendations in such matters through the Department of Justice.

32. Fees.--Game Protectors and Deputy Wardens who produce Department records or testify in any judicial proceeding in Federal or State courts in any case involving violations of the Migratory-Bird Treaty Act or the Lacey Act, or in cases originating in the Department, shall accept no fees, but their expenses for travel and subsistence will be paid in accordance with the fiscal regulations. (See paragraph 688 (a), Administrative Regulations.)

Protectors engaged in the enforcement of the Migratory-Bird Treaty Act may, upon request of proper local officials, testify and produce the necessary records and documents on behalf of a State in respect to violations of State game laws. (See paragraph 688 (a), Administrative Regulations.)

When an employee appears as a witness on behalf of the United States in any case not originating in this Department, his account for travel and subsistence should be presented to the marshal or other officer of the court authorized to pay the expenses of witnesses. When an employee appears in any judicial proceeding on behalf of any party other than the United States, he should arrange in advance with the party in whose interest he appears for his travel and subsistence expenses. (See paragraph 688 (c), Administrative Regulations.)

United States Game Protectors must not accept any fees, parts of fines, rewards, or remuneration of any kind as payment or reward for obtaining or assisting in obtaining cases involving violations of State or Federal game or fish laws.



33. Protection of Wild Animals and Birds and Birds' Eggs and Government Property on Federal Refuges.--Section 145, Criminal Code and Criminal Procedure, Title 18, U. S. Code, which has relation to areas set aside as refuges or breeding grounds for wild animals and birds, and is administered by the Biological Survey, is as follows:

"Sec. 145. Whoever shall hunt, trap, capture, willfully disturb, or kill any bird or wild animal of any kind whatever, or take or destroy the eggs of any such bird on any lands of the United States which have been set apart or reserved as refuges or breeding grounds for such birds or animals by any law, proclamation, or Executive order, except under such rules and regulations as the Secretary of Agriculture may, from time to time, prescribe, or who shall willfully injure, molest, or destroy any property of the United States on any such lands shall be fined not more than \$500, or imprisoned not more than six months, or both. (Sec. 84, act of March 4, 1909, as amended April 15, 1924, 43 Stat. 93.)"

No police power is conferred by this law, and prosecutions for infractions thereof are generally instituted by the filing of an information. Protectors should obtain and furnish the Survey with witness affidavits regarding any violations of this section that may come to their attention.

34. Migratory-Bird Conservation Act.--The Migratory-Bird Conservation Act of February 18, 1929 (Public No. 770, 70th Congress), authorizing the establishment of a system of national refuges for migratory birds, will be administered and enforced under the direct provisions of the law. After refuges are established under the act, there will doubtless be opportunity for Protectors to cooperate in the protection of migratory birds on such refuges.

35. Interstate Shipment of Black Bass.--The Hawes law (44 Stat. 576) regulating the interstate transportation of black bass caught, sold, purchased, or possessed contrary to the law of the State, Territory, or District of Columbia wherein the delivery of such fish for transportation is made, or the transaction or the carrying thereof begins, has not as yet been committed to any particular branch of the Government for administration.

Some of the States have called on the Survey for information relative to the interstate shipment of black bass, and as a matter of course, the Survey has conducted incidental investigations and furnished the States with such evidence as it was able to obtain without the expenditure of any of its funds. Any violations of the act that come to the notice of Protectors should be reported to the Survey or the information given to the United States Attorney for such action as he cares to take in the matter.

36. Temporary Assistants.--A temporary employee does not possess the powers conferred by Section 5 of the Migratory-Bird Treaty Act unless he has been regularly appointed by the Secretary of Agriculture to enforce the law, but he may assist a regular employee in making an arrest.

37. Reports.--Game Protectors must furnish the Survey at the end of each month tentative itinerary reports of travel planned by them for the suc-

ceeding month; showing places to be visited, with probable dates of arrival and departure, and the places where telegrams can be dispatched or mail forwarded to them. In case a tentative itinerary is changed, the Protector should inform the Survey by wire, if necessary.

Protectors must also forward to the Survey at the end of each week, on blanks furnished for that purpose, a summary report containing detailed statements of their activities during each week and the results accomplished. These reports must be in sufficient detail to give information as to the actual work performed and results accomplished each day, together with time of arrival at and departure from points between which travel is performed.

Deputy Game Wardens must render weekly reports on blanks supplied, during the time they are actually employed, and a brief summary report of their activities at the end of each fiscal year (June 30).

38. Concealed Weapons.--Firearms are furnished to Game Protectors as a means of self-protection to be carried when on active duty and they must not be used unless there is impending danger. It is not permissible for a Protector to use a pistol or gun as a means of compelling an offender to obey his command to halt.

A commission as United States Deputy Game Warden does not, in itself, give the person appointed to such position the authority to carry a concealed weapon at all times; in his <sup>Federal</sup> official capacity he may carry such concealed weapon only when on active duty for the Survey.

39. Use of Personally Owned Automobiles.--Game Protectors must not use automobiles, personally owned or hired, in official travel if public means of transportation are available, unless it can be clearly shown that the use of such automobile was to the advantage of the Government, resulting in the saving of time, or money, or in the performance of an official duty that could not otherwise have been performed so efficiently. Each account covering actual operating charges or mileage rates for automobiles must be supported by a certificate setting forth, among other things, "that no public or regular means of transportation could be used as advantageously in the interest of the Government."

40. Transportation Requests.--Transportation requests should be used in paying for railroad transportation, except when it may be necessary to pay cash fare in order to conceal the identity of the Protector.

41. Purchase of Supplies.--Game Protectors must not purchase any equipment or supplies other than subsistence supplies or supplies in connection with minor repairs of boats without being first authorized by the Survey. Authorization may be obtained by telegraph in emergencies.

42. Correspondence and Telegrams.--Original letters from United States attorneys and their assistants in regard to Migratory-Bird Treaty Act cases, together with copy of the Protector's reply, if any, should be furnished the Survey.



All letters to the Survey should be directed to the "Chief, Biological Survey, Washington, D. C." Communications should be sent to no other Department or Bureau of the Government at Washington.

All telegrams to the Survey should be directed to "Biological Survey, Agriculture, Washington." Telegrams should be used sparingly, but Protectors should not hesitate to use them in emergency cases, eliminating all unnecessary words. They should not be used in ordering supplies, asking for increased expense allotment, except in emergencies, or, at government expense in respect to annual or sick leave, or leave without pay.

When writing to the Survey letters containing information that must be submitted to another Protector for further investigation, Protectors should furnish an original and one carbon copy.

No letter should embrace matter concerning more than one subject or case. Write a separate letter on each topic, making each communication full and complete in itself, or if the subject matter is so general in its nature that the letter must necessarily cover more than one case, a sufficient number of carbon copies of the letter should be furnished for filing with each case or subject involved.

Attention is called to the following section of the Administrative Regulations of the Department of Agriculture:

"576. Names on Letterheads. No individual's name shall appear on any letterhead used in the department."

The official title and office address may be printed on stationery, provided permission so to do is first obtained from the Survey.

43. Attendance at Meetings and Delivery of Lectures.---A Game Protector may attend meetings in the course of his official travel, when such attendance will be in the direct interest of his work, and he may deliver at such meetings lectures of instruction and disseminate information in regard to his work and the Federal game laws. Travel must not be performed, however, for the sole purpose of attending meetings without first obtaining from the Survey permission to do so.

A Game Protector must not attend a session of a State legislature or appear before a legislative committee in the interest of legislation unless permission has been first obtained from the Survey. Such authorization will be granted only when a member of a committee on game of a legislature (preferably the chairman) requests the Survey to grant such permission.

44. Political Activity.---(see paragraph 693, Administrative Regulations.)

45. Leave of Absence.---Sections 480 to 525, inclusive, of the Administrative Regulations, as amended, must be strictly followed. It must be borne in mind that leave of absence is a privilege and not a legal right, and can be granted to a Game Protector or other employee only when such leave



can be taken without detriment to the service. Deputy Wardens and temporary employees are not entitled to leave of absence.

46. Care of Property.---Care should be exercised in preventing the loss or theft of a Protector's badge, pistol, binoculars, or other equipment, as lack of ordinary care will probably make it necessary to require an employee to pay for such lost property. An unscrupulous person with a Protector's badge could reap personal gain by impersonating a Federal officer.

47. Efficiency.---Game Protectors are rated upon efficiency, and in fixing ratings the following matters will be considered:

- (1) General activity:
  - (a) Number of violations reported and the sufficiency of the evidence gathered upon which to base prosecutions.
  - (b) Expenses incurred.
  - (c) Completeness of reports.
  - (d) Knowledge of the law and of conditions.
  - (e) Cooperation with State officials.
- (2) Compliance with fiscal and administrative regulations and the rules of the Survey.
- (3) Willingness to work.
- (4) Initiative.
- (5) Dispatch.
- (6) Accuracy.
- (7) Neatness.
- (8) Cheerfulness with which duties are performed.
- (9) Personal conduct.
- (10) The general observance of the law by the people in a Protector's district, provided it is apparent that the Protector was instrumental in bringing about a clean and healthful condition.

No attempt has been made to list these subjects in the order of their importance; suffice it to say that a Protector's entire course of conduct and activity will be scrutinized and considered in determining his efficiency rating.

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